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CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 798.

**THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED,
AS OWNER OF THE STEAMSHIP "TITANIC,"**

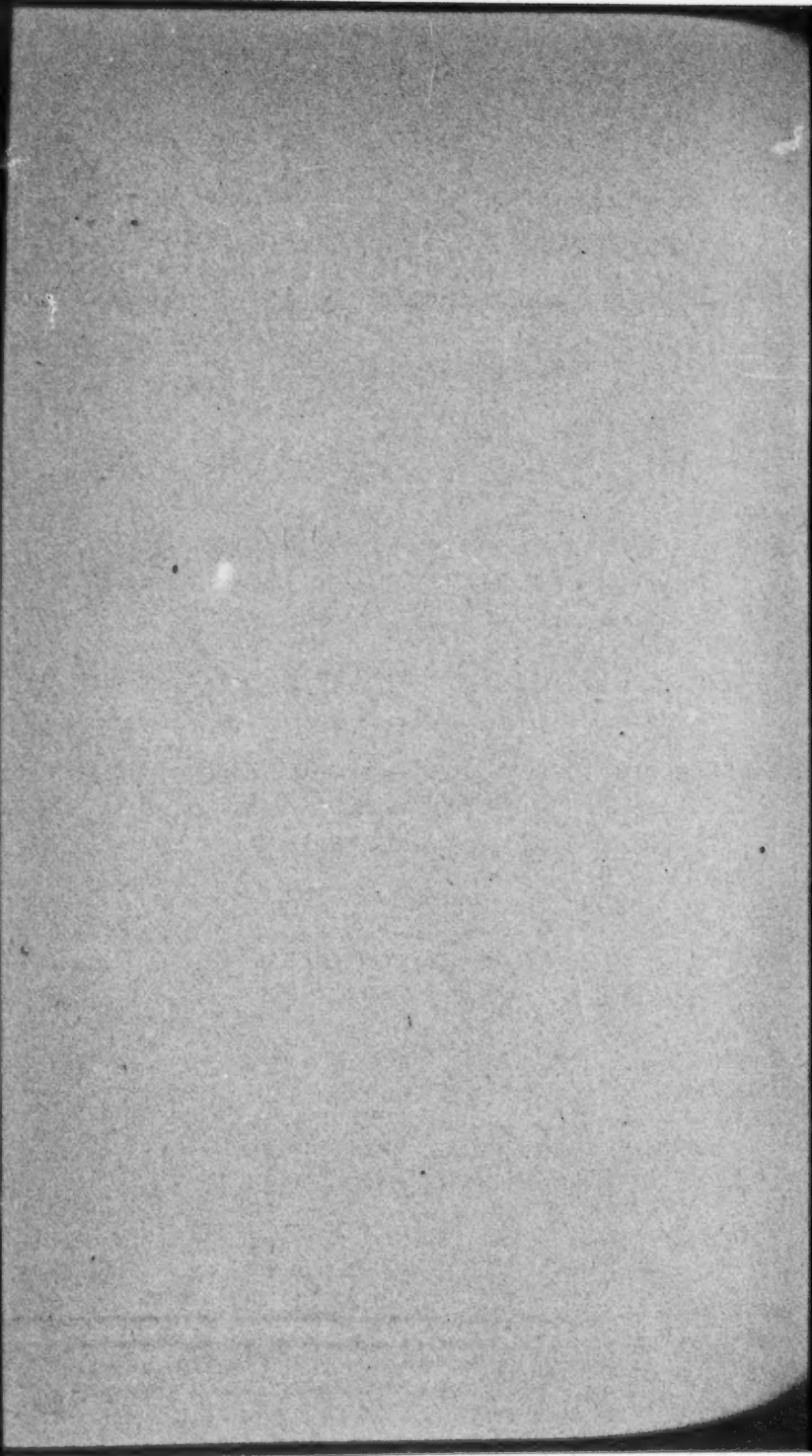
vs.

WILLIAM J. MELLOR AND HARRY ANDERSON.

**ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT.**

FILED NOVEMBER 29, 1913.

(23,949)



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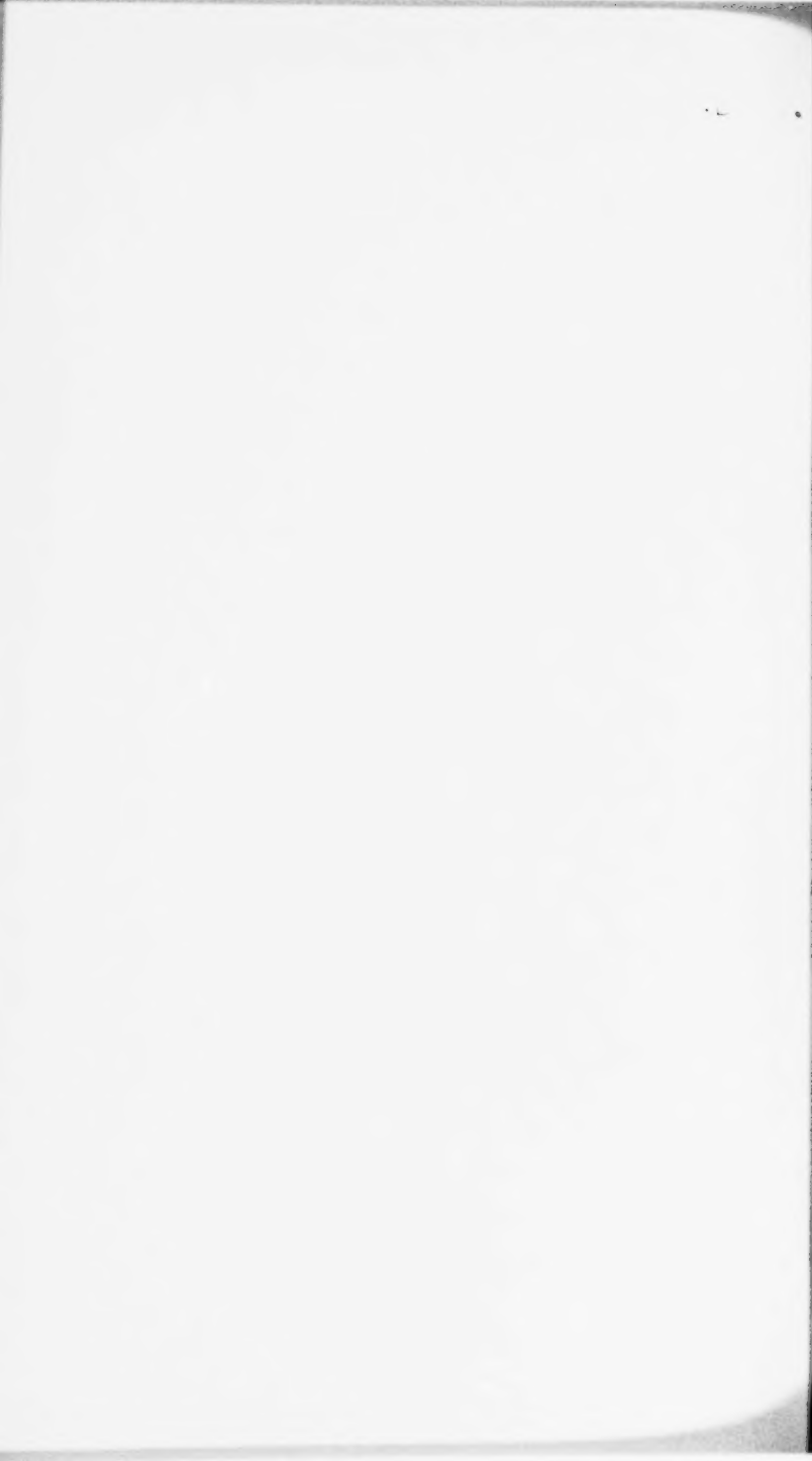
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INDEX.

	Original. Print	
Certificate of the United States circuit court of appeals for the second circuit.....	1	1
Statement of facts	1	1
Questions certified.. ..	3	2
Judges' certificate.....	4	2
Clerk's certificate	5	2
Exhibit A—Petition.....	6	3
B—Notice of exceptions of Mellor	16	8
C—Exceptions of Anderson.....	18	8
D—Final decree.....	21	10



1 United States Circuit Court of Appeals, Second Circuit.

Before Lacombe, Coxe, and Ward, Circuit Judges.

In the Matter of the Petition of THE OCEANIC STEAM NAVIGATION Company, Limited, for Limitation of Liability as Owner of Steamship Titanic.

This cause comes here upon appeal from a decree of the District Court, Southern District of New York, dismissing a petition filed by the owner of the Steamship Titanic to obtain a limitation of petitioner's liability, under the Statutes of the United States. Upon the argument there arose certain questions or propositions of law, concerning which this court desires the instruction of the Supreme Court for its proper decision.

Statement of Facts.

The facts out of which these questions arise are as follows:

2 The Titanic a British Steamship, which had sailed from Southampton, England, on her maiden voyage for New York, collided on the high seas with an iceberg, on April 14th, 1912, and sank the next morning with the consequent loss of the lives of a large number of the passengers and crew. The vessel, her cargo, personal effects of passengers and crew, mails and everything connected with the vessel, except certain lifeboats, became a total loss. The owner, alleging that the collision and consequent loss were due to inevitable accident and were not caused or contributed to by any negligence or fault on the part of the owner or of those in charge of the steamship and were occasioned and incurred without the privity or knowledge of the owner, filed a petition for relief under Sections 4283, 4284 and 4285 U. S. Revised Statutes and the 54th and 56th Rules in Admiralty.

Prior to the filing of the petition a number of actions to recover for loss of life and personal injuries resulting from the disaster had been instituted against petitioner, in federal and state courts. The persons who sustained loss by such collision and sinking were of many different nationalities; many of them were citizens of the United States.

A copy of the petition is hereto annexed marked "A."

Two of the claimants, one a British subject, the other an American citizen filed exceptions to the petition. Copies of these exceptions are annexed marked "B" and "C."

The District Court entered a decree dismissing the petition as to these two exceptants, from which decree appeal was duly taken.

3 A copy of the decree is hereto annexed marked "D."

Questions Certified.

The questions or propositions of law upon which this court desires the instructions of the Supreme Court are:

A. Whether in the case of a disaster upon the high seas, where (1) only a single vessel of British nationality is concerned and there are claimants of many different nationalities; and where (2) there is nothing before the court to show what, if any, is the law of the foreign country to which the vessel belongs, touching the owner's liability for such disaster,—such owner can maintain a proceeding under Sections 4283, 4284 and 4285 U. S. Revised Statutes and the 54th and 56th Rules in Admiralty?

B. Whether, if in such a case it appears that the law of the foreign country to which the vessel belongs makes provision for the limitation of the vessel owner's liability, upon terms and conditions different from those prescribed in the Statutes of this country, the owner of such foreign vessel can maintain a proceeding in the courts of the United States, under said Statutes and Rules?

In the event of the answer to question B being in the Affirmative,

C. Will the courts of the United States in such proceeding enforce the law of the United States or of the foreign country in respect to the amount of such owner's liability?

4 New York, November 21st, 1913.

E. HENRY LACOMBE,
ALFRED C. COXE,
H. G. WARD,

*Judges of the United States Circuit Court
of Appeals for the Second Circuit, Sit-
ting in said Cause.*

5 United States Circuit Court of Appeals for the Second Circuit.

UNITED STATES OF AMERICA,
Second Judicial Circuit, 23:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing certificate and statement of facts in the case therein entitled, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court, at the City of New York, this 24th day of November, 1913.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
*Clerk of the United States Circuit Court of
Appeals for the Second Circuit.*

A.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The petition of the Oceanic Steam Navigation Company, Limited, owner of the steamship Titanic, in a cause of limitation of liability, civil and maritime, alleges, on information and belief, as follows:

First. That petitioner is a British registered company, and operates a line of cargo and passenger steamships between Southampton and New York. Its principal office and place of business in the United States is in the City of New York. At the times hereinafter mentioned, the petitioner was the sole owner of the steamship Titanic, a steel, triple-screw vessel of 46,328 tons gross and 21,851 tons net register, 852.5 feet in length, 92.5 feet in beam, and 59.58 feet in depth of hold. She was built by Harland & Wolff, Ltd., in Belfast, and was launched in 1911. The petitioner had used due diligence to make the steamship seaworthy, and she was, until the accident hereinafter mentioned, tight, staunch and strong, and in all respects seaworthy.

Second. On Wednesday, April 10th, 1912, the Titanic, with passengers, cargo and mails on board, left Southampton on her maiden voyage, bound for New York, via Cherbourg and Queenstown. She was under the command of an experienced master, and was fully and efficiently officered, manned, equipped and supplied. Her equipment of lifeboats was in accordance with the requirements of the British Board of Trade, whose regulations were made applicable to and controlling on the steamship by English law. Her crew numbered 885 all told. She arrived at Cherbourg the afternoon of April 10th, and there took on board additional passengers, and proceeded to Queenstown, where she arrived on the morning of April 11th. After taking on additional passengers and mails, she sailed from Queenstown for New York about 2 o'clock P. M., of April 11th, 1912.

All went well until Sunday, April 14th, when about 11:40 P. M., ship's time, in latitude $41^{\circ} 46' N.$ and longitude $50^{\circ} 14' W.$, the Titanic struck a low-lying iceberg. As a result of this collision the Titanic sank about 2:20 A. M., ship's time, April 15th, 1912, in approximately the same position in which she had struck the iceberg. The master, chief officer, first and sixth officers, all the engineers, all the pursers and a large number of passengers and members of the crew perished. The vessel, her cargo, the personal effects of the passengers and crew, the mails, and everything connected with the vessel, except 14 lifeboats and their equipment, became a total loss.

Third. The facts and circumstances under which the collision and the loss and damage arising therefrom occurred are these:

The Titanic had good weather from the time she left Queenstown. She took the regular course of trans-Atlantic steamships bound west, keeping strictly on the westbound southerly lane or route, and at 5:50 P. M., April 14th, having passed the so-called "corner," longitude $47^{\circ} W.$ and latitude $42^{\circ} N.$, she altered her course to South 36° West (true), and maintained this course until she sighted the

iceberg with which she collided. At 10 P. M., the first, 8 fourth and sixth officers were on watch on the bridge. The weather was clear, bright starlight; there was no wind, and the sea was smooth. Two experienced lookout men were in the crow's nest keeping a vigilant lookout. They had been especially instructed to keep a sharp lookout for ice and they did so. During the watch the master was on the bridge from time to time and in the chart room, which opened on the bridge.

About 11:40 P. M., ship's time, a dark, low-lying object was sighted and reported directly ahead. The first officer, who was in charge of the navigation, immediately ordered the helm hard astarboard and the engines full speed astern. The ship swung to port, but struck the iceberg a glancing blow with her starboard bow forward of the foremast. The shock of the collision was slight, but a grinding sound was heard as the hull came in contact with the submerged portion of the iceberg. The iceberg was what is known as a "growler" or small low-lying berg.

On giving the orders to starboard the helm and reverse the engines, the first officer closed, by electricity, the doors of the watertight compartments.

Immediately after the collision the engines were stopped and the fourth officer was sent from the bridge to examine the holds. He found that water was coming in the forward holds, and so reported to the master. As the ship was making water rapidly, the master ordered the lifeboats to be cleared away, and officers and men at once went to their posts. Stewards were sent through the ship to arouse the passengers and to direct them to put on life belts and muster on the upper decks. Meanwhile signals of distress and calls for 9 assistance were sent out by wireless telegraphy, and rockets were fired.

The ship was equipped with twenty lifeboats. All of these were successfully lowered, except two collapsible boats, one of which floated off, and capsized as the ship sank. Orders were given to load the boats with women and children first, and this was done. Some of the boats were filled from the boat deck and lowered directly to the water. Other boats were filled from the deck below the boat deck, and then lowered. 711 persons were saved in the boats.

The Titanic settled by the head and about 2:20 A. M., ship's time, April 15th, she foundered in 2,000 fathoms of water, going down head first, in approximately the same position in which she struck the iceberg, namely, latitude $41^{\circ} 46' N.$ and longitude $50^{\circ} 14' W.$

About 4 A. M., April 15th, the steamship Carpathia, of the Cunard Line, Arthur Henry Rostrom, Master, bound from New York to the Mediterranean, which had received and answered the Titanic's wireless messages, arrived at the scene of the wreck and rescued all the survivors. She took on board 13 of Titanic's lifeboats and set five others adrift. She then proceeded to New York, where she arrived Thursday, April 18th, and landed the surviving passengers and crew, and delivered the lifeboats to the petitioner.

Fourth. The collision aforesaid and the loss, damage, injury and destruction resulting therefrom were due to inevitable accident, and

10 were not caused or contributed to by any negligence or fault on the part of the petitioner, or of those in charge of the steamship Titanic, and were occasioned and incurred without the privity or knowledge of the petitioner.

Fifth. Proceedings have already been brought against the petitioner for damage alleged to have been sustained by reason of the loss of the steamship Titanic, as follows:

In the United States District Court for the Southern District of New York:

By Louise Robins, as administratrix, etc., of George Robins, deceased, for damages for loss of the life of George Robins.

In the Supreme Court, New York County, New York:

By Frederick W. Shellard, as administrator, etc., of Frederick B. Shellard, deceased, for damages for loss of the life of Frederick W. Shellard.

In the Superior Court, Cook County, Illinois:

By John Devine, as administrator, etc., of A. Willard, deceased, for damages for the loss of the life of A. Willard.

In the District Court, Ramsey County, Minnesota:

By Carl Johnson, for damages for alleged personal injuries sustained and for loss of baggage.

By Oscar Hedman, for damages for alleged personal injuries sustained and for loss of baggage.

A large number of claims have been presented against the petitioner for loss of life and for loss of personal effects of passengers on the Titanic as set forth in Schedule A, annexed to this petition and made a part hereof, and the petitioner expects that other claims will

11 be presented against it and that suits will be begun by persons who sustained injuries and by the representatives of persons who lost their lives by said collision. The demands already made against the petitioner in behalf of various claimants amount to more than \$1,000,000.

Sixth. The steamship Titanic was a total loss, and nothing was saved from the wreck, except the 13 lifeboats above mentioned, together with their equipment, and one collapsible boat, which was subsequently picked up by the steamship Oceanic and brought to New York. These boats are now within this District and within the jurisdiction of this Court. The value of said boats is approximately \$4,520. The freight earned for the transportation of cargo on board the Titanic amounted to £426, or in currency of the United States at exchange of 4.8665=\$2,073.13. The passage moneys prepaid for the transportation of passengers on said steamship amounted to £17,510, or in currency of the United States at exchange 4.8665=\$85,212.41. Of this sum, approximately \$2,650.91 was paid for the transportation of the passengers who were saved and carried to their destination. The entire aggregate value of the interest of the petitioner in said steamship and her pending freight and passage moneys does not exceed the sum of \$91,805.54. The petitioner is unable to state the exact amount of the passage moneys to be accounted for in this proceeding, but is advised that it will be less than the total amount of prepaid passage moneys, and asks that the

amount be determined by a commissioner to be appointed by this Court.

12 Seventh. The petitioner claims exemption from liability, as owner of the steamship Titanic, for the losses, damages, injuries and destruction occasioned or incurred by the collision and sinking aforesaid, and for the claims for damages that have been made, or hereafter may be made, and it alleges that it has valid defences thereto on the facts and under the provisions of the contracts for the carriage of the cargo and of the passengers and their baggage. The petitioner further claims the benefit of the limitation of liability provided in Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and the various statutes supplementary thereto and amendatory thereof, and to that end the petitioner is ready and willing to give a stipulation with sufficient surety for the payment into Court of the amount or value of the petitioner's interest in the steamship Titanic and her pending freight, whenever the same shall be ordered by this Court, as provided by the aforesaid statutes, by general rule 54 in admiralty, and by the rules and practice of this Court.

Eighth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the petitioner prays:

1. That the Court cause due appraisement to be made of the amount or value of its interest in the steamship Titanic and of her pending freight for the aforesaid voyage.

2. That the Court make an order directing the petitioner to file a stipulation with surety to be approved by the Court for the payment into Court of the amount of the petitioner's said interest whenever the Court shall so order.

13 3. That the Court make an order directing the issuance of a monition to all persons claiming damages for all and any loss, damage or injury caused by or resulting from the accident aforesaid, citing them to appear before a Commissioner to be named by the Court in said order, and make due proof of their respective claims, and also to appear and answer the allegations of this petition, according to the law and practice of this Court, at or before a certain time to be fixed by the monition.

4. That the Court make an order directing that, on the giving of such stipulation as may be determined to be proper, or of an ad iterim stipulation, an injunction shall issue restraining the prosecution of the proceedings mentioned in Article Fifth hereof, and the commencement or prosecution hereafter of any suit, action or legal proceeding of any nature or description whatever, except in the present proceeding, against the petitioner in respect of any claim or claims arising out of the aforesaid accident.

5. That the Court in this proceeding adjudge that the petitioner is not liable to any extent for any loss, damage, or injuries, nor for any claim whatsoever, in any way arising out of, or in consequence of, the accident above described; or, if the petitioner shall be adjudged liable then that its liability be limited to the amount or value of the petitioner's interest in the steamship Titanic at the end

14 of the voyage on which she was engaged at the time of said accident, and her pending freight and that the moneys paid or secured to be paid as aforesaid be divided pro rata among such claimants as may duly prove their claims before the Commissioner hereinbefore referred to, saving to all parties any priorities to which they may be legally entitled, and that a decree may be entered discharging the petitioner from all further liability.

6. That the petitioner have such other or further relief as the justice of the cause may require.

BURLINGHAM, MONTGOMERY &
BEECHER,

Proctors for Petitioner.

CHARLES C. BURLINGHAM,
J. PARKER KIRLIN,
Advocates.

15 UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, ss:

Philip A. S. Franklin, being duly sworn, says: I am the General Agent in the United States of the Oceanic Steam Navigation Company, Limited, the petitioner herein. The foregoing petition is true to the best of my knowledge, information and belief. The sources of my information and the grounds of my belief are statements by surviving officers and crew of the steamship Titanic, investigations which I have caused to be made concerning the subject matter of this petition and information which I have acquired in the course of my duties as General Agent of the petitioner in the United States. The reason this verification is not made by the petitioner is that it is a foreign corporation and that there are no officers of the petitioner within the jurisdiction of this Court.

PHILIP A. S. FRANKLIN.

Sworn to before me this 3rd day of October, 1912.

CHAUNCEY I. CLARK,
Notary Public, Kings County.

Certificte filed in New York County.

SCHEDULE A.

This schedule consisting of 60 death claims, 162 baggage claims and 10 personal injury claims is omitted by consent.

16

B.

United States District Court, Southern District of New York.

In the Matter of the Petition of THE OCEANIC STEAM NAVIGATION Company, Limited, for Limitation of Its Liability as Owner of the Steamship Titanic.

SIRS: Please take notice that the claimant, William J. Mellor, a British subject, residing in New York City, excepts to the petition of Oceanic Steam Navigation Company, Limited, for limitation of liability herein, on the following grounds:

1. The petition does not state facts sufficient to show a cause of action for limitation of liability under United States Law, and the practice of this Court.

2. The petition shows on its face that the acts by reason of which and for which it claims limitation of liability took place on board a British registered vessel on the high seas, and not within the territorial waters of any state or country and therefore the law of Great Britain with reference to limitation of liability, if any, would apply, and not that of the United States.

Dated, January 14, 1913.

HUNT, HILL & BETTS,
*Proctors for Claimant, 165 Broadway,
Borough of Manhattan, New York.*

17

FREDERICK M. BROWN, *Advocate.*

To Messrs. Burlingham, Montgomery & Beecher, Proctors for Petitioner.

Alexander Gilchrist, Esq., Clerk.

Endorsed: Wm. J. Mellor's exception to petition. Filed February 8, 1913.

18

C.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

Harry Anderson, claimant, excepts to the petition of the Oceanic Steam Navigation Company, Limited, owner of the steamship Titanic, in a cause of limitation of liability, for that:

First. The allegations of said petition are insufficient in law to entitle the petitioner to a limitation of its liability if it should be adjudicated liable to the claimants herein.

Second. Said petition does not show any right in petitioner to limit its liability under the provisions of the laws of the United States in that:

1. Said petition does not allege that petitioner is a citizen of the United States, but on the contrary alleges in paragraph First thereof that it is a British registered company.

2. Said petition does not allege that the Titanic, the steamship therein mentioned, was an American vessel, but on the contrary alleges in paragraph Second thereof that she was subject to the regulations of the English law.

3. Said petition does not allege that the disaster therein described occurred in waters within the jurisdiction of the United States, nor does it allege that said disaster involved two or more vessels of different nationalities, but on the contrary it appears from the allegations in paragraph Third thereof that said disaster occurred by reason of collision with an iceberg and upon the high seas.

19 Third. Said petition does not show any right in petitioner to limit its liability under the provisions of the laws of Great Britain or of any other country, in that:

1. Said petition does not allege nor refer to any law of great Britain or of any other country by virtue of which it might be entitled to limit its said liability, but on the contrary refers only to the statutes of the United States, mentioned in paragraph Seventh thereof.

2. Said petition does not allege such facts as would entitle petitioner to limit its liability under the provisions of the Merchant Shipping Act of Great Britain relating to such limitation of liability, in the event that this Court should take judicial notice of the said provisions of the said Merchant Shipping Act, in that said petition does not allege or in any manner take consideration of the tonnage of said Titanic, or contain any allegations or statements from which this Court might determine the amount of security necessary to be furnished in order to secure properly to claimants their rights under said provisions of said Merchant Shipping Act. Said petition does not pray that this Court determine the tonnage of the said steamship Titanic in the sense in which that term is used in said provisions of said Merchant Shipping Act, but on the contrary said petition prays that due appraisement be made of the amount or value of its
20 interest in the steamship Titanic and of her pending freight for the aforesaid voyage, and that this Court order petitioner to file in this Court a stipulation for value in conformity with the amount of said petitioner's interest as so determined.

Wherefore, claimant prays that the petition of the Oceanic Steam Navigation Company, Limited, for a limitation of its liability be dismissed with costs to this claimant.

HUNT, HILL & BETTS,

Proctors for Harry Anderson, Claimant, 54 Wall

Street, Borough of Manhattan, New York City.

FREDERICK M. BROWN, *Advocate.*

Endorsed: Harry Anderson's exceptions to petition. Filed February 8, 1913.

21

D.

At a Stated Term of the District Court of the United States for the Southern District of New York, Held at the Court Room, Borough of Manhattan, New York City, on the 13th Day of June, 1913.

Present: Hon. George C. Holt, District Judge.

In the Matter of the Petition of THE OCEANIC STEAM NAVIGATION Company, Limited, for Limitation of Its Liability as Owner of the Steamship Titanic.

Final Decree.

This cause having come on to be heard on the petition filed by petitioner and on the exceptions thereto filed by William J. Mellor and Harry Anderson, claimants, and this Court having made an order on the 22nd day of May, 1913, sustaining said exceptions and granting petitioner leave to amend the petition within twenty days, and that if no such amendment be made within said time the petition be dismissed as to said exceptants and a decree entered to that effect, with costs, and no amendment having been made to said petition within said time.

Now, on motion of Hunt, Hill & Betts, proctors for William J. Mellor and Harry Anderson, exceptants herein, it is hereby

22 Ordered, Adjudged and Decreed:

I. That the petition be dismissed as to the exceptants William J. Mellor and Harry Anderson, with \$— costs.

III. That if an appeal be taken from this decree within twenty days after its entry, the injunctions herein contained in the order for monition, dated October 4, 1912, and the separate restraining order herein of the same date, restraining the beginning or prosecution of any and all suits, actions or legal proceedings in respect to any claim arising out of the collision between the steamship Titanic with an iceberg, on April 14, 1912, as modified by the order of this Court, entered herein on the 5th day of March, 1913, shall continue until twenty days after the final determination of such appeal, or the further order of this Court, provided that the petitioner shall at the same time with its notice of appeal file with the Clerk of this Court a stipulation in writing that any evidence or testimony taken in this proceeding, pending the final determination of an appeal, may be read by either party on the trial of any separate suit, action or proceeding now or hereafter pending between the petitioner and the claimants or any of them, and that pending the final determination of any appeal taken from the decree dismissing the petition as against the claimants William J. Mellor and Harry Anderson, testimony may be taken in any independent suit, action or proceeding now or hereafter instituted by said claimants Mellor and Anderson, and provided also that petitioner file with the Clerk of this Court, at the same timewith its notice of appeal, an approved stipulation or bond with approved surety, whereby there shall be secured

23 to said exceptants the payment of any damages caused to them

by the continuance of said injunction during such appeals, or until the further order of this Court.

IV. That if no appeal be taken from this decree within twenty days after entry thereof, said injunctions shall be vacated as to said exceptants, William J. Mellor and Harry Anderson.

GEO. C. HOLT,
U. S. Dist. Judge.

Endorsed: Final decree and notice of entry, filed June 19, 1913.

24 [Endorsed.] United States Circuit Court of Appeals, Second Circuit. In the Matter of The Oceanic Steam Navigation Co., as owner of Steamship Titanic. "Certificate." United States Circuit Court of Appeals, Second Circuit. Filed Nov. 24, 1913. William Parkin, Clerk.

Endorsed on cover: File No. 23,949. U. S. Circuit Court Appeals, 2d Circuit. Term No. 798. The Oceanic Steam Navigation Company, Limited, as owner of the steamship "Titanic", vs. William J. Mellor and Harry Anderson. (Certificate.) Filed November 29th, 1913. File No. 23,949.

FILED

DEC 5 1913

JAMES D. MAHER

CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 798.

IN THE MATTER

of

THE PETITION OF THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED, FOR
LIMITATION OF ITS LIABILITY AS OWNER OF THE STEAMSHIP "TITANIC."

OCEANIC STEAM NAVIGATION COMPANY, LIMITED,

Petitioner-Appellant,

WILLIAM J. MELLOR AND HARRY ANDERSON,

Claimants-Appellees.

Motion for Advancement of Argument.

HUNT, HILL & BETTS,

Proctors for Claimants-Appellees,

MELLOR AND ANDERSON,

165 Broadway,

Borough of Manhattan,

New York City, N. Y.

GEO. WHITEFIELD BETTS, Jr.,

Of Counsel.

IN THE

1

Supreme Court of the United States.

OCTOBER TERM, 1913.

IN THE MATTER

OF

The Petition of the OCEANIC STEAM
NAVIGATION COMPANY, LIMITED, for
Limitation of its Liability as Owner
of the Steamship "TITANIC."

2

OCEANIC STEAM NAVIGATION COMPANY,
LIMITED,
Petitioner-Appellant,

WILLIAM J. MELLOR and HARRY
ANDERSON,
Claimants-Appellees.

Motion to Advance.

TO THE HONORABLE THE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

3

William J. Mellor and Harry Anderson, appellees in the appeal from which the questions are certified to this court by the Circuit Court of Appeals for the Second Circuit, respectfully move this court to advance the hearing of the said questions on the docket of this court, and set forth the following reasons and facts in support thereof.

On October 4, 1912, the Oceanic Steam Navi-

- 4 gation Company, Limited, instituted in the United States District Court for the Southern District of New York the above entitled proceeding for limitation of its liability as owner of the S. S. "Titanic" with respect to the disaster to such steamship on April 15th, 1912. The aforesaid appellees, one of whom was a British subject and the other a citizen of the United States, filed claims in such proceeding for personal injuries and loss of baggage, and subsequently filed exceptions to the petition on the ground, among others, that it did not state facts sufficient to show a cause of action for limitation of liability under United States law.
- 5 The District Court sustained the exceptions and dismissed the petition as to the excepting claimants only. The petitioner appealed to the Circuit Court of Appeals and on that appeal the questions were certified.

- The appeal involves the question of whether the Federal Act of 1851 providing for the limitation of ship owners' liability, being Sections 4283, 4284 and 4285 of the Revised Statutes of the United States, applies to a case where a single ship of foreign nationality has met with disaster on the high seas, and where no other ship is involved in such disaster. The questions certified present the
- 6 aforesaid question of law, the early determination of which is of the greatest importance because of (1) its international character and its far reaching effect upon the rights of citizens and residents of the United States against the owners of foreign ships meeting with disaster on the high seas, (2) the magnitude of the present case itself, (3) the present peculiar and complicated status of the litigation growing out of the disaster both in this country and in England, (4) the advisability of having the preliminary question of law authoritatively answered before the proceeding goes to trial on the merits.

In spite of the long lapse of time since the enactment of the Act of 1851, the question of its applicability to a case like that of the "Titanic" has never been authoritatively settled, and has never been directly passed upon by the Supreme Court. The case is of unusual importance in itself owing to the magnitude of the disaster, the large number of lives which were lost and the number of persons, many of them in straitened circumstances, whose interests are involved. 7

On November 29th, 1913, the claims filed in this proceeding for loss of life were 388 in number and the damages claimed \$14,540,957.75, and the claims for loss of personal property, separate from claims for loss of life, were 253 in number and the damages claimed \$1,877,415.11, the total amount of damages claimed for all causes, including claims for personal injuries and loss of cargo, being \$16,925,687.86. A large proportion of the claims for loss of life are those of widows whose husbands perished in the disaster. 8

The ship owner, upon instituting the proceeding, obtained an injunction restraining all persons from bringing any form of action or suit outside of the limitation proceeding, and claimants were, therefore, obliged to file their claims in this proceeding on pain of forfeiting all their rights. Subsequently in order to preserve the causes of action in case the claimants could not obtain relief in this proceeding the injunction was modified so as to permit, in the case of claims for loss of life, the mere institution of separate actions, but restraining the further prosecution thereof pending the final determination of this proceeding. About two hundred separate actions for loss of life were thereupon instituted, which are, however, stayed. No claimants, therefore, can have relief in this 9

10 country until this proceeding is terminated. In England judgments have already been obtained in actions at law brought by individual British claimants.

The whole conduct of the limitation proceeding in this country is necessarily dependent upon the decision of the questions certified. If the petitioner is not entitled, upon its showing lack of privity and knowledge, to limit its liability, if any, according to the American Act, then claimants would have in any event the right to recover substantial damages if the disaster was of a negligent character, even though the petitioner should show
11 itself entitled to the benefits of the British Act limiting ship owners' liability to a sum figured on the tonnage of the vessel. This sum would amount in the present case under the English Act, approximately to \$3,179,000. If, however, the petitioner is entitled to the benefits of the American Act, the claimants can recover only nominal damages, unless they are able to prove that the disaster occurred through negligence with the privity or knowledge of the petitioner. Since the surviving value of the ship and her pending freight has been appraised at approximately \$96,000., and the claims amount to approximately \$16,925,687., the recovery on that basis would be only a little more
12 than one-half of 1%. Owing to the fact that the District Court has dismissed the petition only as to the excepting claimants Mellor and Anderson, the limitation proceeding has been continued in the District Court. A large amount of testimony has been taken and the case may be ready for trial in the near future. It is important in view of the foregoing considerations that the questions of law raised by the questions certified should be authoritatively determined in advance of such trial for the guidance of the Trial Court and in order that the parties may know what the real issues are.

Unless, however, the hearing in the Supreme Court 13
on the questions certified can be advanced it will
be impossible to await a hearing thereon in the
regular course owing to the danger of loss of vital
testimony in the two years which would elapse.

A further reason for advancing the hearing on
the certified questions, growing out of the status
of the litigation, is that unless the questions are
finally decided at an early date there is a possi-
bility that all claims will be defeated through loss
of testimony now available. At the present time,
owing to the injunction, evidence may be taken
only in the limitation proceeding, and should that
proceeding ultimately fail, upon the courts dis- 14
missing the petition altogether on the ground that
the American Statute does not apply, then
those claimants who shall have begun separate
actions within the statutory time would have to
give evidence on the trials of such suits. If the case
should go to trial before the determination of the
important question of law by the Supreme Court,
an appeal would then undoubtedly be taken to the
Circuit Court of Appeals and subsequently a writ
of *certiorari* might be obtained from the Supreme
Court. All of this would take so much time that
most of the testimony might have been lost through
the death or disappearance of witnesses or other- 15
wise before the final determination of the case, and
should the entire proceeding then be dismissed all
claimants might be left helpless.

Your petitioners therefore respectfully move that
the hearing of the certified questions be advanced
to the earliest possible date.

GEO. WHITEFIELD BETTS, JR.,
Counsel for Appellees.

Dated December 2nd, 1913.

16

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1913.

IN THE MATTER

OF

- 17 The Petition of the OCEANIC STEAM
NAVIGATION COMPANY, LIMITED, for
Limitation of its Liability as Owner
of the Steamship "TITANIC".

OCEANIC STEAM NAVIGATION COMPANY,
LIMITED,
Petitioner-Appellant,

WILLIAM J. MELLOR and HARRY AN-
DERSON,
Claimants-Appellees.

18

SIRS:

PLEASE TO TAKE NOTICE that on Monday, the 8th day of December, 1913, we shall present to the Supreme Court of the United States, at the opening of Court on said day, or as soon thereafter as counsel can be heard, a motion to advance the

argument of the above entitled cause to an early 19
date, a copy of which motion is hereto attached.

Dated, December 2, 1913.

Yours, etc.,

HUNT, HILL & BETTS,
Proctors for Claimants-Appellees,
Mellor & Anderson,
165 Broadway,
Borough of Manhattan,
New York City, N. Y.

GEO. WHITEFIELD BETTS, JR.,
Of counsel.

20

To:

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner-Appellant.

Receipt of a copy of the within notice is hereby
admitted this 2nd day of December, 1913.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner-Appellant.

21



FILED

DEC 5 1913

JAMES D. MAHER

CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 798

**THE OCEANIC STEAM NAVIGATION COMPANY,
LIMITED, AS OWNER OF THE STEAMSHIP TITANIC**
Petitioner-Appellant

against

WILLIAM J. MELLOR AND HARRY ANDERSON
Claimants-Appellees

MOTION TO ADVANCE

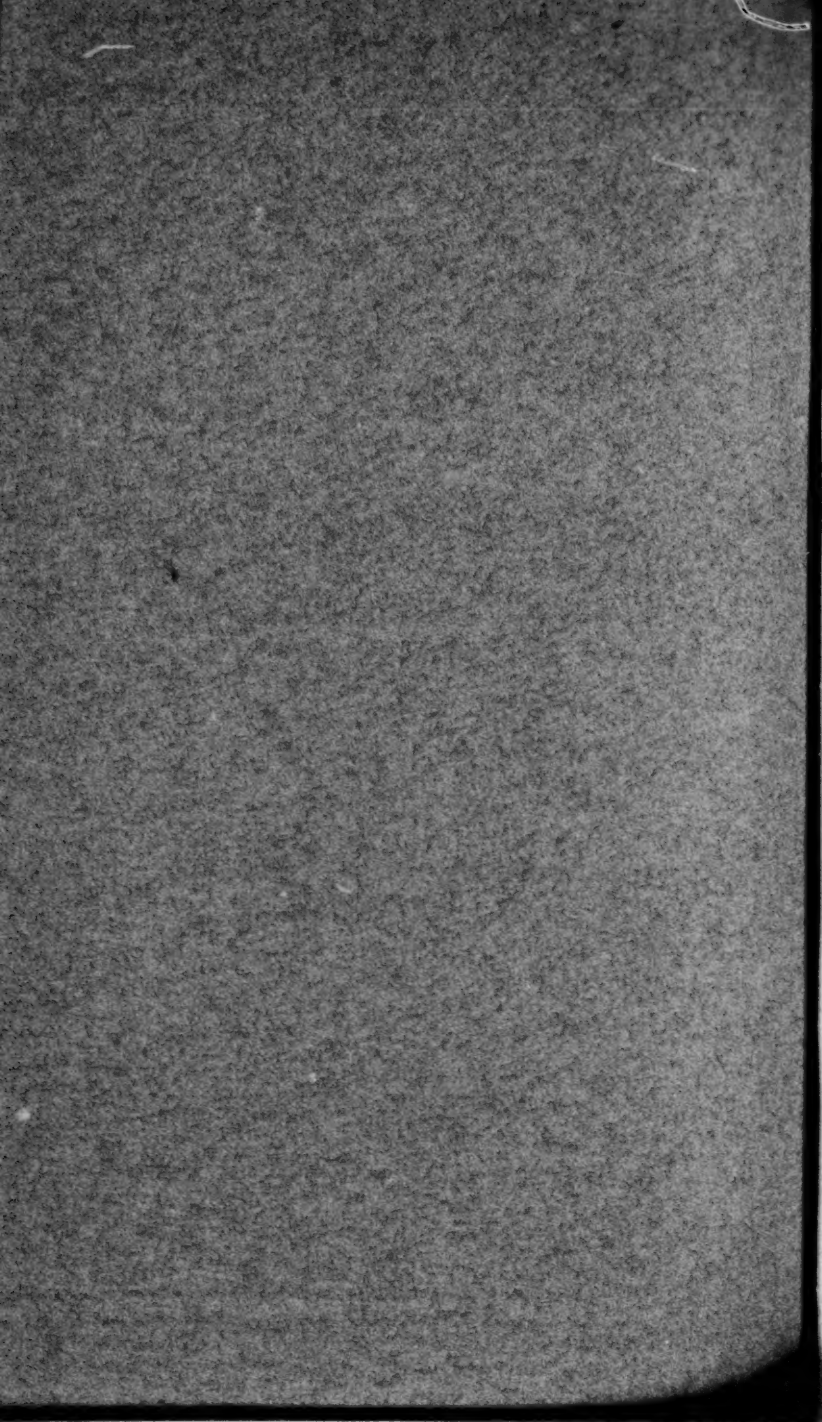
BURLINGHAM, MONTGOMERY & BEECHER
Proctors for Petitioner-Appellant

CHARLES C. BURLINGHAM

J. PARKER KIRLEN

NORMAN B. BEECHER

Of Counsel



SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1913.

No. 798.

THE OCEANIC STEAM NAVIGATION COMPANY,
LIMITED, as owner of the Steamship
TITANIC,

Petitioner Appellant,

AGAINST

WILLIAM J. MELLOR and HARRY ANDERSON,
Claimants-Appellees.

SIRS:

PLEASE TAKE NOTICE that a motion will be made at a session of this Court to be held on the 8th day of December, 1913, at 12 o'clock, noon, or as soon thereafter as counsel can be heard, to advance this cause on the docket of this Court.

Dated New York, December 2, 1913.

Yours, &c.,

CHARLES C. BURLINGHAM,
Of Counsel for Petitioner-Appellant.

To Messrs. HUNT, HILL & BETTS,

Proctors for Claimants-Appellees,

and HARRINGTON, BIGHAM & ENGLAR,

Proctors for intervening Claimants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

THE OCEANIC STEAM NAVIGATION COMPANY,
Limited, as owner of the steamship
TITANIC,

Petitioner-Appellant,

AGAINST

WILLIAM J. MELLOR and HARRY ANDERSON,
Claimants-Appellees.

No. 798

Now comes the Oceanic Steam Navigation Company, Limited, petitioner-appellant, and moves this Court to advance this cause on the docket of this Court.

STATEMENT

This cause comes here upon questions certified by the Circuit Court of Appeals for the Second Circuit.

On April 14, 1912, the steamship *Titanic*, owned by the petitioner, which is a British registered company, collided with an iceberg on the high seas, and the next morning sank and became a total loss except for certain lifeboats. A large number of the passengers and crew of the *Titanic* lost their lives.

On October 4, 1912, the petitioner filed a petition in the District Court for the Southern District of New York, pursuant to the Act of March 3, 1851, entitled "An Act to limit the liability of shipowners and for other purposes," now embodied in Sections 4283 to 4285 of the Revised Statutes of the United States, and the statutes supplementary thereto and amendatory thereof, and the 54th and 56th Rules in Admiralty.

The petition alleged that the collision and consequent loss were due to inevitable accident and were not caused or contributed to by any negligence or fault on the part of the owner or of those in charge of the steamship *Titanic*, and were occasioned and incurred without the privity or knowledge of the owner. It prayed the Court to adjudge that the petitioner was not liable to any extent for any loss arising out of the accident, or, if adjudged liable, that its liability be limited to the amount or value of the petitioner's interest in the *Titanic* at the end of the voyage on which she was then engaged and her pending freight.

Two of the claimants, one an American citizen and the other a British subject, filed exceptions to the petition. The District Court entered a decree dismissing the petition as to these two exceptants, and the petitioner appealed to the United States Circuit Court of Appeals for the Second Circuit, which has certified three questions to this Court as follows:

“ A. Whether in the case of a disaster upon the high seas, where (1) only a single vessel of British nationality is concerned and there are claimants of many different nationalities; and where (2) there is nothing before the court to show what, if any, is the law of the foreign country to which the vessel belongs, touching the owner's liability for such disaster, such owner can maintain a proceeding under Sections 4283, 4284 and 4285 U. S. Revised Statutes and the 54th and 56th Rules in Admiralty?

“ B. Whether, if in such a case it appears that the law of the foreign country to which the vessel belongs makes provision for the limitation of the vessel owner's liability, upon terms and conditions different from those prescribed in the statutes of

this country, the owner of such foreign vessel can maintain a proceeding in the courts of the United States, under said Statutes and Rules?

“In the event of the answer to question B being in the affirmative,

“C. Will the courts of the United States in such proceeding enforce the law of the United States or of the foreign country in respect to the amount of such owner's liability?”

REASONS FOR ADVANCEMENT

I

A great many claims have been filed in this proceeding by administrators and executors of persons who lost their lives by the disaster. Many of these claimants, as well as claimants who have sustained personal injuries and who have lost property, have filed answers to the petition, but the proceeding cannot be brought to trial until the questions certified by the Circuit Court of Appeals have been answered.

II

The decision of the District Court determined that the petition was insufficient. Until this appeal is disposed of, therefore, no trial of the cause upon the merits can be had.

III

The decision of the District Court is at variance with the hitherto settled interpretation of the Limited Liability Act, and so long as it is allowed to stand it will operate to deprive shipowners of the benefits of that act to which

they have heretofore been held entitled. The prompt review of this decision is therefore of great importance to shipping interests the world over.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner-Appellant.

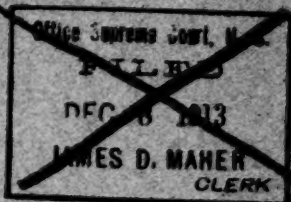
CHARLES C. BURLINGHAM,
J. PARKER KIRLIN,
NORMAN B. BEECHER,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913

No. 798



IN THE MATTER
of

The Petition of the OCEANIC STEAM NAVIGATION COMPANY
LIMITED, for Limitation of its Liability as Owner of the Steam-
ship "TITANIC"

OCEANIC STEAM NAVIGATION COMPANY, LIMITED

Petitioner-Appellant

WILLIAM J. MELLOR and HARRY ANDERSON

Claimants-Appellees

**ON MOTIONS FOR ADVANCEMENT OF
ARGUMENT.**

HARRINGTON, BIGHAM & ENGLAR

Proctors for MARY A. HOLVERSON

Executrix, Intervening Claimant

64 Wall Street New York City

HOWARD S. HARRINGTON

Of Counsel

Supreme Court of the United States.

OCTOBER TERM, 1913.

IN THE MATTER

of

The Petition of the OCEANIC
STEAM NAVIGATION COMPANY,
LIMITED, for limitation of its lia-
bility, as owner of the Steamship
"TITANIC."

OCEANIC STEAM NAVIGATION COM-
PANY, LIMITED,

Petitioner-Appellant,

WILLIAM J. MELLOR and HARRY
ANDERSON,

Claimants-Appellees.

ON MOTION TO ADVANCE.

TO THE HONORABLE THE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

On behalf of Mary A. Holverson, executrix,
and many other claimants in this proceeding, we
desire to join in the motions made by both the ap-
pellant and appellees to advance the hearing upon
the questions certified to this Court by the Cir-
cuit Court of Appeals for the Second Circuit.

The Steamship "Titanic," a British steamship
owned by the Oceanic Steam Navigation Company,
Limited, a British corporation, collided with an

iceberg on the high seas on April 14th, 1912, and sank, resulting in the death of over 1400 passengers and members of her crew, and the loss of all her cargo and substantially all of the effects of her passengers and crew. The petitioner filed a petition in the District Court of the United States for the Southern District of New York, setting up substantially the foregoing facts, alleging that the collision occurred without negligence on the part of the officers of the ship, and that, even if they were negligent, such negligence was without the knowledge or privity of petitioner, denying liability, and further praying for a limitation of its liability, if any, as owner of the steamship, in accordance with Sections 4283 to 4285 of the Revised Statutes. The claimants, Mellor and Anderson, filed exceptions to the petition on the ground that the facts stated showed that the right of the petitioner to limit its liability, if any, was dependent upon the law of England, not that of the United States. The District Court, Judge Holt sitting, sustained the exceptions, gave the petitioner leave to amend its petition, and, in default of such amendment, directed that the libel be dismissed as to Mellor and Anderson. The petitioner did not amend, the libel was dismissed as to such claimants, and the petitioner appealed to the Circuit Court of Appeals for the Second Circuit. That Court has now certified three questions to this Court under Section 134 of the Judiciary Act of the United States. These questions present the question, briefly, whether the Courts of the United States will apply the law of England or the law of the United States in the limitation proceedings. The importance of the question certified is that, if the petitioner is permitted to limit its liability, by the law of the United States its

liability would be about \$97,000, while by the law of England it would be about \$3,000,000.

In the limitation proceedings claims have been filed by numerous claimants for the deaths of various passengers, for the loss of the baggage of passengers, for personal injuries to passengers and for loss of cargo. The aggregate amount of these claims is about \$17,000,000.

The undersigned represents numerous claimants in this proceeding, the aggregate of whose claims is in excess of \$2,000,000. In addition, the undersigned has been retained as advocate and counsel by various firms of proctors in New York City, who have filed claims on behalf of various claimants. Among such firms are Shearman & Sterling, Joline, Larkin & Rathbone and Rounds, Schurman & Dwight. When the questions here involved were certified to this Court, the undersigned, by special leave of the Circuit Court of Appeals for the Second Circuit, was permitted to appear in this proceeding on behalf of Mary A. Holverson, executrix, and other claimants, in order to protect the very substantial interest which such claimants have in this proceeding.

Testimony has been taken on the question whether or not the loss of the "Titanic" was due to negligence, and, if so, whether or not such negligence occurred with the knowledge, privity or fault of the petitioner. Preparation for the trial of the proceeding has been vigorously conducted by the claimants, and it is believed that claimants will be ready for trial on the merits in February or March, 1914.

The question of the applicability of English law presented by the certified questions is believed to be a comparatively simple one and does not re-

quire the examination of an extensive record. It involves merely an interpretation of the limitation of liability statute of the United States, which statute has been involved in comparatively few adjudications by this Court.

The trial of the proceeding in the District Court probably cannot be held until the preliminary question here involved is disposed of. A delay in the trial of this action will result in serious detriment to the claimants in many respects.

The majority of them are dependent relatives of steerage passengers, who are in straightened circumstances, and many of them are actually destitute and dependent upon charity for their support.

Moreover, the claimants are not adequately protected by any bond or lien to secure the payment of any ultimate recovery from the petitioner. The petitioner has filed a bond for \$97,772.12, which is the amount to which its liability will be limited if the laws of the United States are held to be applicable. If the law of England is held to be applicable, the Company will be liable to pay about Three Million Dollars, if it is allowed to limit its liability at all. Pending the determination of the present appeal, the claimants are without any security for the larger sum.

For the foregoing reasons, the undersigned respectfully joins in the motions of the appellant and the appellees to advance this case for a speedy hearing.

Dec. 8, 1913.

HOWARD S. HARRINGTON,
Counsel for Mary A. Holverson,
Executrix, Intervening
Claimant.

JAN 2 1914

JAMES D. MAHER

CLERK

IN THE

Supreme Court of the United States.

No. 798.

WILLIAM J. MELLORS AND HARRY ANDERSON,

Petitioners,

VS.

OCEANIC STEAM NAVIGATION COMPANY, LTD., AS OWNER OF THE
S. S. "TITANIC,"*Respondent.*

PETITION TO SUPREME COURT OF THE UNITED STATES UNDER THE
ACT OF CONGRESS, MARCH 3, 1911, FOR WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

HUNT, HILL & BETTS,

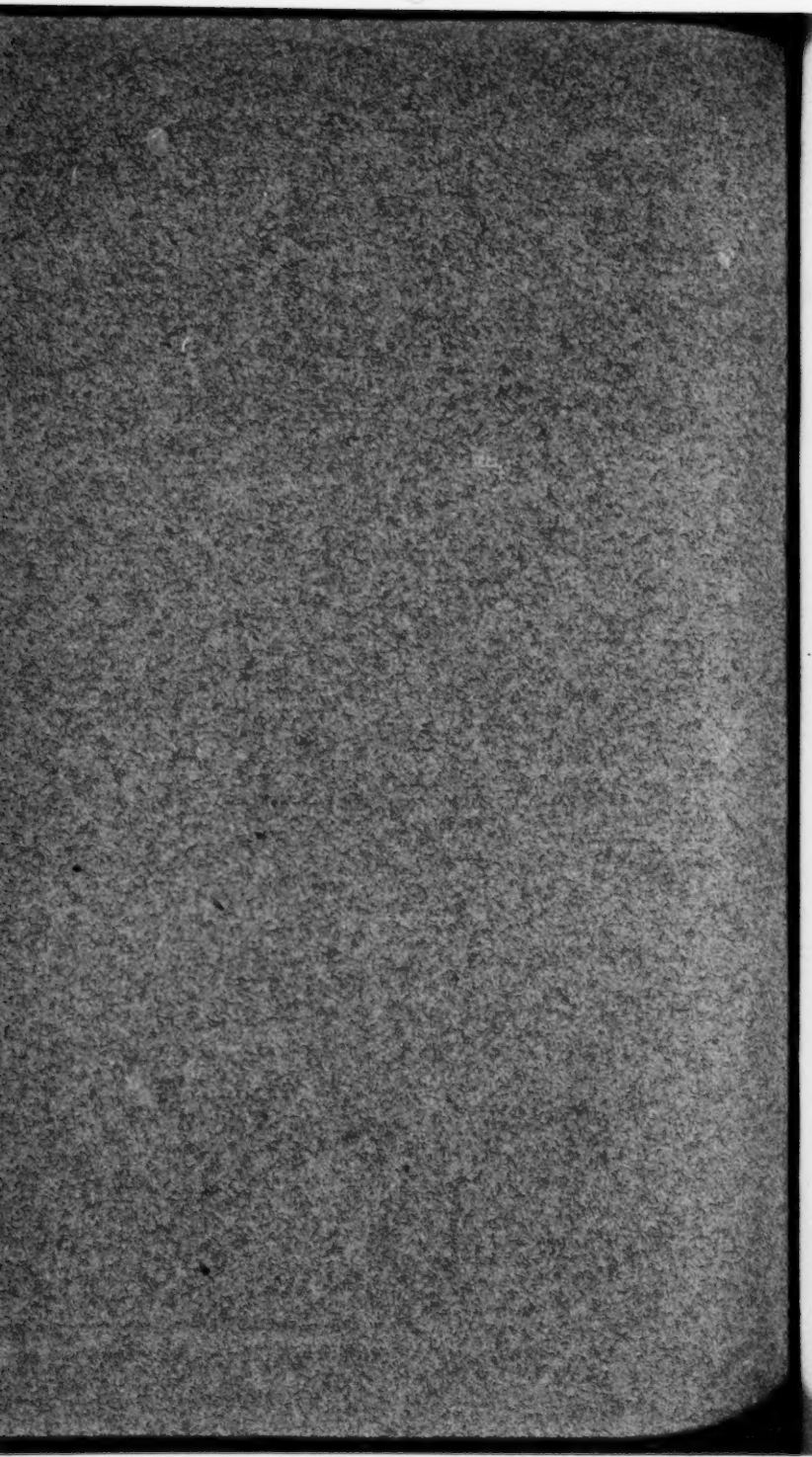
Proctors for Petitioners and Appellees.

GEO. WHITEFIELD BETTS, Jr.,

FREDERICK M. BROWN,

FRANCIS H. KINNICUTT,

Of Counsel.



IN THE

1

Supreme Court of the United States.

No.

WILLIAM J. MELLORS and HARRY
ANDERSON,

Petitioners,

VS.

OCEANIC STEAM NAVIGATION COMPANY,
LTD., as Owner of the S. S.
"Titanic",

Respondent.

2

Petition, under the Act of Congress of March 3, 1911, of William J. Mellors and Harry Anderson, claimants and appellees in Case No. 798 on the records of the Supreme Court of the United States for a writ of *certiorari* to the United States Circuit Court of Appeals for the Second Circuit commanding that it certify before the Supreme Court of the United States the entire record in the Case No. 128 in the said Circuit Court of Appeals, October Term, 1913.

3

**4 Petition to the Supreme Court of the
United States under the Act of
Congress, March 3, 1911, for Writ
of Certiorari to the United States
Circuit Court of Appeals for the
Second Circuit.**

TO THE SUPREME COURT OF THE UNITED STATES:

Your petitioners, William J. Mellors and Harry Anderson, claimants and appellees in case No. 798 on the records of this Court for the October term, 1913, present to this Court, this, their petition, for a writ of *certiorari* addressed to the Circuit Court of Appeals for the Second Circuit commanding said Court and the Clerk thereof to certify to the Supreme Court of the United States the record and proceedings in the case pending before it entitled:

IN THE MATTER of the OCEANIC STEAM
NAVIGATION COMPANY, LTD., for
Limitation of its Liability as Owner
of the Steamship "TITANIC."

6 OCEANIC STEAM NAVIGATION COMPANY,
LIMITED,
Petitioner-Appellant,

WILLIAM J. MELLORS and HARRY
ANDERSON,
Claimants-Appellees.

the same being No. 128 on the records of the said Circuit Court of Appeals for the review and determination of the said cause by the Supreme Court of the United States as provided in Section 239 of

the Act of Congress approved March 3, 1911, and 7
your petitioners respectfully represent as follows:

1. The said Circuit Court of Appeals has sent a certificate to this Court certifying certain questions of law arising in the cause concerning which it seeks the instruction of this Court. The certificate is No. 798 on the docket of this present term and this court has granted a motion to advance, and has set the cause down for argument on the fifth day of January, 1914, after the causes previously set down for that day.

The certificate sets forth that this cause came into the Circuit Court of Appeals upon appeal from a decree of the District Court, Southern District 8
of New York, dismissing as to the claimants-appellees the petition of the Oceanic Steam Navigation Company, as owner of the Steamship *Titanic* to obtain a limitation of its liability, under Sections 4283, 4284 and 4285 of the Revised Statutes of the United States, upon exceptions to such petition filed by the said William J. Mellors and Harry Anderson, two of the persons who had filed claims against the ship owner in the said proceeding.

The petition, the exceptions and the decree of the District Court are annexed to the certificate, which further states the facts as follows: "The *Titanic*, a British Steamship, which had sailed 9
from Southampton, England on her maiden voyage for New York, collided on the high seas with an iceberg on April 14th, 1912, and sank the next morning with the consequent loss of lives of a large number of the passengers and crew. The vessel, her cargo, personal effects of passengers and crew, mails and everything connected with the vessel, except certain life boats, became a total loss." The questions certified to this court are three in number and are the following:

"A. Whether in the case of a disaster upon the high seas, where (1) only a single vessel of British

- 10 nationality is concerned and there are claimants of many different nationalities; and where (2) there is nothing before the court to show what, if any, is the law of the foreign country to which the vessel belongs, touching the owner's liability for such disaster,—such owner can maintain a proceeding under Sections 4283, 4284 and 4285 U. S. Revised Statutes and the 54th and 56th Rules in Admiralty?

- 11 B. Whether, if in such a case it appears that the law of the foreign country to which the vessel belongs makes provision for the limitation of the vessel owner's liability, upon terms and conditions different from those prescribed in the Statutes of this country, the owner of such vessel can maintain a proceeding in the courts of the United States, under said Statutes and Rules?

In the event of the answer to question B being in the affirmative,

- C. Will the courts of the United States in such proceeding enforce the law of the United States or of the foreign country in respect to the amount of such owner's liability?"

- 12 The reasons advanced on this application that the whole record be sent up to this Court for its consideration, are:

1. That the three questions certified necessarily do not raise all the questions before the Circuit Court of Appeals and it is desirable that this Court should dispose of all questions of law raised by the exceptions to the petition (or at least should be free so to do), to the end that the matter be disposed of once and for all and that this Court may not be harrassed and the litigation unnecessarily prolonged by subsequent appellate proceedings on questions collateral and secondary in importance to the questions which have been certified.

2. That it will be a convenience to this Court 13
in passing upon the questions certified, to have before it the complete record, which consists entirely of pleadings and the interlocutory and final decrees and opinion of the District Court in the limitation proceeding, the Court having already before it in the certificate all but a few of the papers constituting said record.

3. That in view of the great importance of the main question of law raised on the appeal, namely, whether the Statutes of the United States providing for limitation of shipowners' liability apply to the case of a disaster on the high seas, involving a single ship of foreign nationality, it is desirable that this court should not be hampered or confined by the form of the questions certified but should be free to settle the question as it is raised on the whole record. 14

4. In view of the shortness of the record, to review the whole thereof will entail no additional, and probably less, labor to this court and will probably ensure the final determination of the cause within a reasonable period of time and will avoid delay which would be greatly to the prejudice of the vast majority of the parties to the proceeding. 15

And your petitioners will ever pray, etc.

WILLIAM J. MELLORS,

HARRY ANDERSON,

By HUNT, HILL & BETTS,
Proctors.

16 STATE OF NEW YORK, }
County of New York, } ss.:

WILLIAM J. MELLORS, being duly sworn, deposes and says:

I am one of the above-named petitioners. I have read the foregoing petition and it is true to the best of my belief and knowledge.

WILLIAM J. MELLORS.

Sworn to before me this 29th }
day of December, 1913. }

JOHN W. CRANDALL,
Notary Public,

17 New York County.

I hereby certify that I have examined the foregoing petition, and that in my opinion it is well founded and entitled to the favorable consideration of this court.

GEO. WHITEFIELD BETTS, JR.,
FREDERICK M. BROWN.

SUPREME COURT OF THE UNITED STATES.

WILLIAM J. MELLORS and HARRY
ANDERSON,
Petitioners,

VS.

OCEANIC STEAM NAVIGATION COMPANY,
LTD., as owner of the S. S.
"TITANIC".

Respondent.

Notice of
application
for Writ of
Certiorari.

20

SIRS:

Please take notice that the annexed petition for a writ of *certiorari* to the United States Circuit Court of Appeals for the Second Circuit to require that the whole record in that certain cause, being No. 128, October Term, 1913, in the Circuit Court of Appeals for the Second Circuit entitled:

IN THE MATTER

OF

The Petition of the OCEANIC STEAM
NAVIGATION COMPANY, LTD., for
Limitation of its Liability as Owner
of the S. S. TITANIC.

OCEANIC STEAM NAVIGATION COMPANY,
LIMITED,
Petitioner-Appellant.

WILLIAM J. MELLORS and HARRY
ANDERSON,
Claimants-Appellees.

21

be sent up to this Court for its consideration, will
be presented to the Supreme Court of the United

- 22 States on Monday, January 5th, 1914, at the opening of court at twelve o'clock noon, or as soon thereafter as counsel can be heard.

Dated New York, December 29th, 1913.

Yours, etc.,

HUNT, HILL & BETTS,
Proctors for William J. Mellors and
Harry Anderson, Petitioners, for
Writ of Certiorari.

- To MESSRS. BURLINGHAM MONTGOMERY & BEECHER,
Proctors for Oceanic Steam Navigation
Company, Limited, Respondent.
- 23 MESSRS. HARRINGTON, BIGHAM & ENGLAR,
Proctors for Mary A. Holverson, Executrix,
Claimant.

17

IN THE
Supreme Court of the United States

October Term, 1913. No. 798

IN THE MATTER

of

the Petition of the OCEANIC STEAM NAVIGATION
COMPANY, LIMITED, for Limitation of its Liabil-
ity as Owner of the Steamship "TITANIC"

OCEANIC STEAM NAVIGATION COMPANY, LIMITED
Petitioner-Appellant

against

WILLIAM J. MELLOR and HARRY ANDERSON
Claimants-Appellees

**PETITION AND NOTICE OF MOTION
FOR LEAVE TO FILE BRIEF, ETC.**

HOWARD S. HARRINGTON

Advocate

HARRINGTON, BIGHAM & ENGLAR

Proctors for MARY A. HOLVERSON,
Executrix, and Others, Intervening Claimants

IN THE
Supreme Court of the United States,
OCTOBER TERM, 1913.
No. 798.

IN THE MATTER
of

The Petition of the OCEANIC STEAM
NAVIGATION COMPANY, LIMITED,
for Limitation of its Liability
as Owner of the Steamship "TI-
TANIC;"

OCEANIC STEAM NAVIGATION COM-
PANY, LIMITED,

Petitioner-Appellant,
against

WILLIAM J. MELLOR and HARRY
ANDERSON,

Claimants-Appellees.

SIRS:

PLEASE TAKE NOTICE, that on Monday, the 5th day of January, 1914, the undersigned will present the annexed petition to the Supreme Court of the United States at the opening of Court on that day.

Dated, January 2nd, 1914.

Yours, etc.,

HOWARD S. HARRINGTON,

Counsel and Advocate for Mary A. Holverson,
Executrix, and Others, Intervening
Claimants.

To:

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner-Appellant.

MESSRS. HUNT, HILL & BETTS,
Proctors for Claimants-Appellees.

A. GORDON MURRAY, ESQ.,
Proctor for certain Claimants.

Petition.

IN THE
Supreme Court of the United States,
 OCTOBER TERM, 1913.
 No. 798.

IN THE MATTER
of

The Petition of the OCEANIC STEAM
 NAVIGATION COMPANY, LIMITED,
 for Limitation of its Liability
 as Owner of the Steamship "TI-
 TANIC;"

OCEANIC STEAM NAVIGATION COM-
 PANY, LIMITED,

Petitioner-Appellant,
against

WILLIAM J. MELLOR and HARRY
 ANDERSON,

Claimants-Appellees.

TO THE HONORABLE THE JUSTICES OF THE SU-
 PREME COURT OF THE UNITED STATES:

The petition of Howard S. Harrington respect-
 fully shows:

Your petitioner is a member of the Bar of this
 Court and a member of the firm of Harrington,
 Bigham & Englar, proctors of New York. The
 firm of Harrington, Bigham & Englar has filed
 claims as proctors for upwards of eighty claim-
 ants in the present proceeding for limitation of
 liability of the owner of the steamship "Titanic."

These claims include claims for the loss of the lives of passengers, personal effects and cargo on board the steamship "Titanic" at the time of her loss. In addition, your petitioner has been retained as advocate for Messrs. Joline, Larkin & Rathbone, Messrs. Rounds, Schurman & Dwight, Messrs. Shearman & Sterling, and other proctors of record for various claimants in this proceeding.

In the present proceeding, when the Circuit Court of Appeals for the Second Circuit, heard the appeal from the order of the District Court, sustaining the exceptions of Anderson and Mellor to the petition herein, the firm of Harrington, Big- ham & Englar was permitted by a special order of the Circuit Court of Appeals, for the Second Circuit, dated November 25th, 1913, to enter their appearance herein as proctors for Mary A. Hol- verson, as executrix of Alexander O. Holverson, deceased, with the privilege of filing briefs and taking part in all arguments. The effect of the decision of this Court in answer to the questions certified by the Circuit Court of Appeals will be to determine whether the Oceanic Steam Navi- gation Company, Limited, can maintain a pro- ceeding for the limitation of its liability for the loss of the steamship "Titanic" either under the law of the United States or under the law of England. This decision will vitally affect the rights of the claimants represented by your peti- tioner, and will determine what law is to be ap- plied to such claims. The claimants represented by your petitioner, therefore, have a substantial interest in the decision in this proceeding, and on their behalf your petitioner respectfully re- quests leave to file a brief in this proceeding, and to take part in the argument thereon in this

Court, subject to arrangement with counsel for the claimants-appellees.

Dated, January 2, 1914.

HOWARD S. HARRINGTON,
Petitioner.

STATE OF NEW YORK, }
County of New York. } ss.:

HOWARD S. HARRINGTON, being duly sworn, says: I am the petitioner herein; I have read the foregoing petition and the same is true to my own knowledge.

HOWARD S. HARRINGTON.

Sworn to before me this 2nd }
day of January, 1914. }

RUSSELL H. PORTER,
Notary Public,
New York County.

IN THE

Supreme Court of the United States

October Term, 1913. No. 798

IN THE MATTER

of

the Petition of the OCEANIC STEAM NAVIGATION
COMPANY, LIMITED, for Limitation of its Liabil-
ity as Owner of the Steamship "TITANIC"

OCEANIC STEAM NAVIGATION COMPANY, LIMITED
Petitioner-Appellant
against

WILLIAM J. MELLOR and HARRY ANDERSON
Claimants-Appellees

**BRIEF ON BEHALF OF MARY A. HOLVER-
SON, EXECUTRIX, AND OTHERS,
INTERVENING CLAIMANTS**

HARRINGTON, BIGHAM & ENGLAR
Proctors for MARY A. HOLVERSON
Executrix, and others, Intervening Claimants
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Counsel



Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 798.

IN THE MATTER
of

The Petition of the OCEANIC STEAM
NAVIGATION COMPANY, LIMITED,
for limitation of its liability
as owner of the Steamship
"TITANIC."

OCEANIC STEAM NAVIGATION COM-
PANY, LIMITED,

*Petitioner-Appellant,
against*

WILLIAM J. MELLOR and HARRY
ANDERSON,

Claimants-Appellees.

***Brief on Behalf of Mary A. Holverson,
Executrix, and Others, Intervening
Claimants.***

Statement of Facts.

The circumstances under which this cause arises are stated as follows in the certificate of the Circuit Court of Appeals, for the Second Circuit:

"STATEMENT OF FACTS.

"The facts out of which these questions arise are as follows:

"The Titanic, a British Steamship, which

had sailed from Southampton, England, on her maiden voyage for New York, collided on the high seas with an iceberg, on April 14, 1912, and sank the next morning with the consequent loss of the lives of a large number of the passengers and crew. The vessel, her cargo, personal effects of passengers and crew, mails and everything connected with the vessel, except certain lifeboats, became a total loss. The owner, alleging that the collision and consequent loss were due to inevitable accident and were not caused or contributed to by any negligence or fault on the part of the owner or of those in charge of the steamship and were occasioned and incurred without the privity or knowledge of the owner, filed a petition for relief under Sections 4283, 4284 and 4285 U. S., Revised Statutes, and the 54th and 56th Rules in Admiralty.

"Prior to the filing of the petition a number of actions to recover for loss of life and personal injuries resulting from the disaster had been instituted against petitioner, in federal and state courts. The persons who sustained loss by such collision and sinking were of many different nationalities; many of them were citizens of the United States.

"A copy of the petition is hereto annexed marked 'A'. (*Note.*)

"Two of the claimants, one a British subject, the other an American citizen, filed exceptions to the petition. Copies of these exceptions are annexed marked 'B' and 'C.'

"The District Court entered a decree dismissing the petition as to these two exceptants, from which decree appeal was duly taken.

"A copy of the decree is hereto annexed marked 'D.'

"(*Note*):—The exhibits are not copied in this brief.

"QUESTIONS CERTIFIED.

"The questions or propositions of law upon which this Court desires the instructions of the Supreme Court are:

"A. Whether in the case of a disaster upon the high seas, where (1) only a single vessel of British nationality is concerned and there are claimants of many different nationalities; and where (2) there is nothing before the court to show what, if any, is the law of the foreign country to which the vessel belongs, touching the owner's liability for such disaster,—such owner can maintain a proceeding under Sections 4283, 4284 and 4285, U. S. Revised Statutes, and the 54th and 56th Rules in Admiralty?

"B. Whether, if in such a case it appears that the law of the foreign country to which the vessel belongs makes provision for the limitation of the vessel owner's liability, upon terms and conditions different from those prescribed in the Statutes of this country, the owner of such foreign vessel can maintain a proceeding in the courts of the United States, under said Statutes and Rules?

"In the event of the answer to question B being in the affirmative,

"C. Will the courts of the United States in such proceeding enforce the law of the United States or of the foreign country in respect to the amount of such owner's liability?"

The undersigned represents upwards of eighty claimants in this proceeding, the aggregate of whose claims is in excess of two million dollars. In addition, the undersigned has been retained as advocate and counsel by various firms of proctors in New York City, who have filed claims on behalf of various claimants. Among such firms are Shearman & Sterling, Joline, Larkin & Rath-

bone and Rounds, Schurman & Dwight. When the Circuit Court of Appeals announced its intention to certify questions to this Court, the undersigned, by special leave of the Circuit Court of Appeals, was permitted to appear in this proceeding on behalf of Mary A. Holverson, executrix, and other claimants. Pursuant to such permission, the undersigned submitted suggestions as to the form of the questions and certificate, and was heard by the Circuit Court of Appeals upon this subject. The undersigned now respectfully applies for leave of this Court to file this brief on behalf of Mary A. Holverson, executrix, and other claimants, in order to protect the very substantial interest which such claimants have in the decision of the questions, here involved.

A long and able opinion was written by the learned District Judge (Judge Holt) and an exhaustive brief has been submitted on behalf of the claimants-appellees. It is not proposed to duplicate these discussions; all that is intended in this brief is to summarize the basic principles upon which it is believed the decision of the Court should rest, and to refer to the leading cases in which they have been announced.

The disaster occurred within the jurisdiction of British law.

A vessel on the high seas is regarded as part of the territory of the nation whose flag she flies.

Crapo v. Kelly, 16 Wall., 610. In this case the Court held that the Insolvency Laws of the State of Massachusetts were in effect upon a vessel owned by a citizen of Massachusetts, even while such vessel was navigating the high seas. This Court said at page 624:

"We are of the opinion, for the purpose we are considering, that the ship Arctic was a portion of the territory of Massachusetts, and the assignment by the insolvent court of that State passed the title to her, in the same manner and with the like effect as if she had been physically within the bounds of that State when the assignment was executed."

In support of this rule the Court reviewed the leading texts on International Law and the adjudicated cases, pages 624 to 632.

This doctrine has been repeatedly reaffirmed by this and other courts.

The Hamilton, 207 U. S., 398;

Wilson v. McNamee, 102 U. S., 572, 574;

The Lamington, 87 Fed. Rep., 752.

In tort actions the *lex loci delicti commissi* governs with respect to all matters of substantive law.

The rule is well established, in the United States at least, that, in the case of torts, the law of the place where the tort is committed governs as to all matters of substantive law.

The Hamilton, 207 U. S., 398;

Cuba Railroad Co. v. Crosby, 222 U. S., 473.

The latter case involved the question of an employer's liability for injury to a servant through a defect in machinery, to which the employer's attention had been called by the employee. This Court said at page 478:

"But when an action is brought upon a cause arising outside of the jurisdiction, it always should be borne in mind that the duty of the Court is not to administer its notion of

justice, but to enforce an obligation that has been created by a different law. *Slater v. Mexican National R. R. Co.*, 194 U. S., 120, 126. The law of the forum is material only as setting a limit of policy beyond which such obligations will not be enforced there. With very rare exceptions, the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. *American Banana Co. v. United Fruit Co.*, 213 U. S., 347, 356. See *Bean v. Morris*, 221 U. S., 485, 486, 487. That and that alone is the foundation of their rights."

The amount to which the owner of a vessel may limit his liability for injuries to passengers and cargo is a question of substantive right, and not of procedure.

The ultimate question presented by this appeal is whether the amount to which the owners of the "Titanic" may limit their liability (if allowed to limit it at all) shall be the amount prescribed by the statutes of the United States or by those of Great Britain. This question, it is submitted, is one of substantive law, not of procedure.

The question whether or not a given act constitutes a tort for which the injured party has a right of action against the wrongdoer, is a question of substantive law governable solely by the law of the place where the act is committed. As this Court said in *Huntington v. Attrill*, 146 U. S., 647, at page 670:

"In order to maintain an action for an injury to the person or to movable property, some courts have held that the wrong must be one which would be actionable by the law of the place where the redress is sought,

as well as by the law of the place where the wrong was done. But such is not the law of this Court. By our law, a private action may be maintained in one state, if not contrary to its own policy, for such a wrong done in another and actionable there, although a like wrong would not be actionable in the state where the suit is brought."

It would seem to follow that the *extent* of such liability must also necessarily be a matter of substantive law similarly governable. If the *liability* arises by virtue of the law of the place, the *extent of that liability* must be limited by the same law. And it is believed that this doctrine is clearly supported by the authorities:

Northern Pacific R. R. Co. v. Babcock,
154 U. S., 190.

This was an action brought against a railroad for the death of an engineer in its employ. The tort resulting in the death of the engineer occurred in the State of Montana, in which there was a wrongful death statute which allowed a recovery of damages without prescribed limit. The action was brought in Minnesota where the wrongful death statute in force at the time of the accident limited the recovery to \$5,000. The jury awarded the plaintiff a verdict of \$10,000. This Court on writ of error sustained the verdict on the theory that the *lex loci* determined the extent of liability, as well as the existence of any liability at all.

Slater v. Mexican National R. R. Co., 194
U. S., 120.

This was an action for the wrongful death of a railroad employee, which occurred in Mexico. The Mexican law did not allow the recovery of a lump sum as damages, but gave the widow a right

to a fixed pension during her life, or until her remarriage, under certain prescribed conditions. This Court held that the extent of the liability of the Railroad was governed by the Mexican law, and as it was of such a character that it could not be enforced by common law courts in this country, our courts could afford the plaintiff no redress. The Court said at page 126:

"As Texas has statutes which give an action for wrongfully causing death, of course, there is no general objection of policy to enforcing such a liability there, although it arose in another jurisdiction. *Stewart v. Baltimore & Ohio R. R.*, 168 U. S., 445. But when such a liability is enforced in a jurisdiction foreign to the place of the wrongful act, obviously that does not mean that the act in any degree is subject to the *lex fori*, with regard to either its quality or its consequences. On the other hand, it equally little means that the law of the place of the act is operative outside its own territory. The theory of the foreign suit is that although the act complained of was subject to no law having force in the forum, it gave rise to an obligation, an *obligatio*, which, like other obligations, follows the person, and may be enforced wherever the person may be found. *Stout v. Wood*, 1 Blackf. (Ind.) 71; *Dennick v. Railroad Co.*, 103 U. S., 11, 18. But as the only source of this obligation is the law of the place of the act, it follows that that law determines not merely the existence of the obligation, *Smith v. Condry*, 1 How., 28, but equally determines its extent. It seems to us unjust to allow a plaintiff to come here absolutely depending on the foreign law for the foundation of his case, and yet to deny the defendant the benefit of whatever limitations on his liability that law would impose. In *Northern Pacific R. R. v. Babcock*, 154 U. S., 190, 199, an action

was brought in the District of Minnesota for a death caused in Montana, and it was held that the damages were to be assessed in accordance with the Montana statute. Therefore, we may lay on one side as quite inadmissible the notion that the law of the place of the act may be resorted to so far as to show that the act was a tort, and then may be abandoned, leaving the consequences to be determined according to the accident of the place where the defendant may happen to be caught."

If it is suggested that the foregoing are cases in which the right itself depends upon the statute, it is sufficient to answer that the reasoning upon which the opinions proceed is not based upon any such distinction, and further that these cases have been followed and their principles applied by this Court in an action for personal injuries *not resulting in death*, which presents a precise analogy to the present case.

Mexican Central Railway Co., Ltd., v. Eckman, Guardian, etc., 205 U. S., 538.

Furthermore, the majority of the claims against the petitioner in this proceeding are for the deaths of passengers on board the "Titanic," which concededly must rest upon Lord Campbell's Act in England. As to such claims, the extent of the limitation of liability is clearly governed by the above decisions, as such limitation is specifically fixed by Section 503-i of the British Limitation of Liability Act.

The extent of the limitation of liability of a ship owner under the statutes here involved has universally been treated by the leading text writers as a matter of substantive law.

Dicey, Conflict of Laws, Second Edition,
page 651;

Minor, Conflict of Laws, Sec. 195;

Wharton, Private International Law,
Sec. 473.

Similar limitations have been held to be matters of substantive law, governable by the *lex loci*.

The Eagle Point, 142 Fed., 453; C. C. A.,
3rd Circuit.

In this case two British vessels were both held in fault for a collision on the high seas, and the Court held that the English law, which permits a cargo owner to recover but one-half his loss from either vessel, should be applied, and not the American law, which permits a recovery of full damages from either ship. The Court said at page 454:

"The law of Great Britain in limiting the recovery which may be awarded against either one of two vessels, seems to us plainly to respect a matter of liability or obligation, for it determines the extent of the obligation of each of them."

Pope v. Nickerson, 3 Story, 465; 19 Fed.
Cas., No. 11,274.

In this case Mr. Justice Story, sitting at Circuit, dealt with a case in which a schooner owned in Massachusetts was driven by stress of weather to a port of refuge. A bottomry bond was given to repair her and subsequently both she and her cargo were sold to satisfy the bottomry bond and the balance brought into Court. At this time there was a statute in Massachusetts substan-

tially similar to the present American Limitation of Liability Act. Mr. Justice Story held that the transaction was governed by the law of Massachusetts and that the Massachusetts statute was applicable thereto.

The Lamington, 87 Fed., 752; District Court, New York.

In this case a seaman on a British vessel was injured on the high seas through the negligence of the owner in failing to provide proper ropes. The proceeding was in the form of a libel *in rem*, a proceeding not authorized by the British law.

Judge Thomas, in an able opinion discussing substantially all the authorities, held that the English Law governed and that there could be no recovery *in rem*.

The American Limitation Act was intended to apply only to cases arising within the jurisdiction of the United States, or to cases in which it would be unjust to apply any other law.

It was contended in the courts below, and presumably will be argued here, that the American statute for limitation of shipowners' liability was intended to apply to all vessels, American or foreign, whose owners might resort to our courts, regardless of the jurisdiction within which the disaster involved may have occurred. The American statute does not expressly purport to apply to foreign ships or to occurrences within the jurisdiction of foreign nations. The language of the statute is, "The owner of any vessel * * *". It is, of course, elementary that general words of this nature will *prima facie* be interpreted to be

limited to matters within the jurisdiction of the law making power.

U. S. v. Palmer, 3 Wheat, 610;
American Banana Co. v. United Fruit Co., 213 U. S., 347, at p. 357.

The cases in this Court involving the Limitation Act have never interpreted it as extending to all owners of vessels seeking its benefits in our courts, but, on the contrary, have expressly limited its application to cases in which the place of the disaster was subject to the jurisdiction of the United States or in which it would be unjust to apply any particular foreign law as, for instance, in the case of a collision between vessels belonging to different nationalities having different laws with respect to limitation of liability. The leading case on the subject is:

The Scotland, 105 U. S., 24.

In this case the Court passed upon the right of the owner of a British steamer to limit its liability under the American statute as against libellants of various nationalities in the case of a collision with an American ship on the high seas. It was decided that such an owner was entitled to the benefit of the American statute. Under familiar principles, the actual decision of the Court must, of course, be understood as limited to the facts involved. Mr. Justice Bradley, however, writing the opinion of the Court, gave expression to the following *dictum* which, by virtue of its frequent quotation and general acceptance may be said to have practically the same authority as an actual decision.

“In administering justice between parties

it is essential to know by what law, or code, or system of laws, their mutual rights are to be determined. When they arise in a particular country or State, they are generally to be determined by the laws of that State. Those laws pervade all transactions which take place where they prevail, and give them their color and legal effect. Hence, if a collision should occur in British waters, at least between British ships, and the injured party should seek relief in our courts, we would administer justice according to the British law, so far as the rights and liabilities of the parties were concerned, provided it were shown what that law was. If not shown, we would apply our own law to the case. In the French or Dutch tribunals they would do the same. But, if a collision occurs on the high seas, where the law of no particular State has exclusive force, but all are equal, any forum called upon to settle the rights of the parties would *prima facie* determine them by its own law as presumptively expressing the rules of justice; but if the contesting vessels belonged to the same foreign nation, the court would assume that they were subject to the law of their nation carried under their common flag, and would determine the controversy accordingly. If they belonged to different nations, having different laws, since it would be unjust to apply the laws of either to the exclusion of the other, the law of the forum, that is, the maritime law as received and practised therein, would properly furnish the rule of decision. In all other cases, each nation will also administer justice according to its own laws. And it will do this without respect of persons, to the stranger as well as to the citizen."

Considering both the decision and the *dictum* in this case together, the case may be analyzed as laying down the following principles:

(1) If a collision occurs on the high seas between American vessels or between vessels of two or more different nationalities having different laws on the subject, or if a collision occurs within the territorial waters of the United States, the American Courts will apply the American Limitation Act.

(2) If a collision occurs on the high seas between vessels of the same nationality or between vessels of different nationalities whose laws with respect to limitation of liability are similar or if a collision occurs within the territorial waters of a foreign country, the American Courts will apply the law of the flag of the vessel or of the country in whose territorial waters the disaster occurred.

It will be noted that the substantial effect of these rules is that the *lex loci delicti* governs save in the one case of a collision upon the high seas between vessels of different nationalities having different laws as to limitation of liability. In such a case there is no *lex loci delicti*, and the *lex fori* must be applied, if justice is to be administered. It is believed that this is the true rule laid down by this court in *The Scotland*.

This case has been cited with approval and followed in the following cases in this Court involving the Limitation Act:

The Great Western, 118 U. S., 520, 537;
(Collision between Norwegian and British vessels);

The City of Norwich, 118 U. S., 468, 490;
(Collision between American vessels);

Butler v. Boston S. S. Co., 130 U. S., 527, 555, 556; (Stranding of an Amer-

ican vessel in American territorial waters);

In re Garret, 141 U. S., 12, 13; (Collision on American inland waters);

Craig v. Continental Ins. Co., 141 U. S., 638, 645; (Sinking of an American vessel);

La Bourgogne, 210 U. S., 95, 115, 120; (Collision between a French and British vessel).

The decision in each of these cases is entirely consistent with the opinion of Mr. Justice Bradley, and there is nothing in any of them that suggests any criticism of any portion of that opinion.

The petitioner offers two explanations of *The Scotland* and *La Bourgogne*:

It argues that *La Bourgogne* is inconsistent with *The Scotland* because the *Cromartysire* (which sank *La Bourgogne*) had been held free from fault for the collision and was not a party to the proceeding. But this argument overlooks what is believed to be the true basis of Mr. Justice Bradley's opinion, namely, that the *lex loci* governs in every case where there is a *lex loci*. Whether the *Cromartysire* was at fault or not, the tort occurred where the vessels collided, which was as much British territory as French, and, as the British and French limitation laws are radically different, there was no *lex loci* which could be applied.

It is further contended that Mr. Justice Bradley meant that the test of the applicability of the American law should be the nationality of the parties to the litigation, and intended to lay down the rule that the American law should be applied unless the contesting vessels and parties

to the litigation are all of the same foreign nationality or of different nationalities all having the same law. It is submitted that the opinions in these cases are not susceptible of this construction; the test is not the nationality of the parties, but the law of the place of the disaster. The whole opinion in *The Scotland*, particularly the passage quoted *supra*, is clearly based on this view of the matter.

The doctrine that the law applicable to a tort depends upon the nationality of the parties to the litigation is one not supported by any case that has been found. Apart from cases of wills and marital relations and kindred subjects quite foreign to the present discussion, the nationality of parties is quite immaterial in determining the law to be applied in a given case. The result of such a test would be startling; on this theory if two British vessels, manned by British subjects and carrying British passengers, should be in collision on the high seas, and litigation should arise in our courts to which the ships, crews and passengers were parties, the litigation would be governed by *British* law; but if either vessel carried a Chinese cook who was a party to the litigation, the rights of all parties would be determined by *American* law.

The decisions of the lower Federal Courts bearing more or less upon the questions here involved are thoroughly and satisfactorily discussed in the opinion of Judge Holt. As they are not binding on this Court, no further analysis of them is deemed necessary.

The fact that the Harter Act has been held to apply to all foreign vessels carrying goods to and from American ports is quite beside the point.

The purposes of the two Acts are quite different; one is intended to promote American shipping, the other to protect American importers and exporters from unreasonable provisions in bills of lading. The distinction between the two Acts is shown by the very case upon which the petitioner relies.

The Chattahoochee, 173 U. S., 540, 550.

In that case the Court, while applying the Harter Act to a foreign ship, quoted with approval the following passage, among others, from Mr. Justice Bradley's opinion in *The Scotland*:

"In administering justice between parties it is essential to know by what law, or code, or system of laws, their mutual rights are to be determined. When they arise in a particular country or State, they are generally to be determined by the law of that State. Those laws pervade all transactions which take place where they prevail and give them their color and legal effect." (p. 550.)

The Court then pointed out (p. 551) that:

"It will be observed that the language of the Harter Act is more specific in its definition of the vessels to which it is applicable than the Limited Liability Act. * * *"

A decision in favor of the claimants in this proceeding will not oust the Federal Courts of jurisdiction of this proceeding.

The District Court in the order sustaining the exceptions gave the petitioner an opportunity to amend its petition by setting up the English Limitation Act. The present American Act was modeled on the previous English Act. *The Scotland*,

105 U. S. 24, 32. The present English Act (Merchant Shipping Act, 1894, Sections 503-9) is substantially similar. The measure of limitation under the present Act is based upon the allowance of so many £ Sterling for each registered ton, instead of the value of the ship and pending freight after the disaster, as in the American Act. The British measure of limitation may, however, be computed by our courts with substantially the same facility as the measure of limitation under the American Act, and it is not perceived that an American Court would find any serious difficulty in enforcing the British Limitation Act under the procedurē prescribed by this Court in connection with the American Act.

Questions of pleading involved.

Discussion of any question of pleading or of the technical questions of presumption as to the foreign law is purposely omitted from this brief, because it is hoped that this Court will decide the essential question of substantive law as to whether the English measure of limitation of liability or the American measure is applicable to the present case.

This question of substantive law is inherent in the present case. It was first raised in the form of a motion in the District Court for an instruction to the Commissioner to compute the amount to which the liability of the petitioner would be limited in accordance with the English statute. It was again raised by way of exceptions to the petition in the present proceeding. It has also been raised by various claimants represented by the undersigned and also by others, by way of affirmative defenses in answers to the petition.

Sooner or later, it is well understood by all parties that this question must be presented on the merits to this Court (unless the petitioner should be wholly exonerated from liability for the disaster.) Under these circumstances, the certified questions present an opportunity for this Court to pass upon the issue squarely, freed from any other complication and at a comparatively early stage of the proceeding, and thereby simplify the subsequent conduct of the case for all parties involved. Such a course, it is submitted, would best subserve the ends of justice. As the learned District Judge said in his opinion:

"Counsel for the petitioner urges that the question raised by these exceptions should more properly be left to be determined after evidence is taken upon the final hearing. That course is frequently preferable where there is any doubt of the controlling facts in respect to which evidence should be taken. But the essential facts necessary to raise the question involved in these exceptions appear on the face of the petition and are entirely uncontradicted. The 'Titanic' was a British ship owned by a British company, which foundered in midocean from collision with an iceberg. Those facts are all that are necessary to raise the fundamental question whether her owners can obtain exemption from liability by virtue of the American law. The point can be decided upon these exceptions and can be taken up on appeal and decided upon a brief record, whereas probably a number of months and possibly years would be occupied in taking the evidence in this case, causing great labor, expense and delay. I think the question should be decided at the outset."

The Circuit Court of Appeals for the Second

Circuit, has taken the same view, and for this reason has squarely presented the question of substantive law in questions B and C, and it is respectfully urged that this Court, in the interests of justice, follow the same course.

January, 1914.

Respectfully submitted,

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Counsel for Mary A. Holverson,
Executrix, and others, inter-
vening Claimants.

HENRY J. BIGHAM,
D. ROGER ENGLAR,
OSCAR R. HOUSTON,
On the Brief.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913.

THE OCEANIC STEAM NAVIGATION COMPANY,

Limited, as Owner of the Steamship "Titanic,"

Petitioner-Appellant,

against

WILLIAM J. MELLOR AND HARRY ANDERSON,

Claimants-Appellees.

No. 798.

Motion to be Allowed to File Brief as Amicus Curiae,
Notice of Same,

and

Brief as Amicus Curiae on Behalf of Louise Robins,
Administratrix, and Other Claimants.

HERBERT & MICOU,

GRAHAM & L'AMOREAUX,

*Precitors for Louise Robins, Administratrix,
and Other Claimants.*

BENJ. MICOU,

RICHARD P. WHITELEY,

GEORGE S. GRAHAM,

Of Counsel.

SUBJECT INDEX.

Notice of Motion to File Brief as <i>Amicus Curiae</i>	1-2
Motion	2
Status of Case	4-6
Argument	6-20

SUB-HEADS.

Question A	6-11
Question B	11-18
Question C	18-19
Conclusion	19-20

CITATIONS.

American Banana Co. v. United Fruit Co. 213 U. S.	
347	13
Butler v. Boston Steamship Co. 130 U. S. 555	7
Crapo v. Kelly, 83 U. S. 610	7
Crapo v. Kelly, 83 U. S. 610	17
Cuba R. R. Co. v. Crosby, 222 U. S. 473	13
Cuba R. R. Co. v. Crosby, 222 U. S. 473	16
Grotius, <i>De Jure Belli</i> , Book 2, Chap. 4, Sec. 13	7
Kent's Commentaries, Vol. 1, p. 26	7
<i>La Bourgogne</i> , 210 U. S. 95	13
<i>La Bourgogne</i> , 210 U. S. 95	16
Mexican Central R. R. Co. v. Eckman, Guard. 205	
U. S. 538	8
Northern Pacific R. R. Co. v. Babcock, 154 U. S. 190	8
Providence & N. Y. Steamship Co. v. Hill Mfg. Co.	
109 U. S. 578, 595	19
Slater v. The Mexican Nat. R. R. Co. 194 U. S. 120	8
Slater v. The Mexican Nat. R. R. Co. 194 U. S. 120	10
Slater v. The Mexican Nat. R. R. Co. 194 U. S. 120	12
Smith v. Condry, 1 How. 28	10
<i>The Belgenland</i> , 114 U. S. 355	13

<i>The China v. Walsh</i> , 74 U. S. 53	10
<i>The Eagle Point</i> , 142 Fed. Rep. 453	13-16
<i>The Halley</i> , Eng. Law Rep. 1868, p. 2 (Ad. & Ecc.)	
p. 13	10
<i>The Harrisburg</i> , 119 U. S. 199	7
<i>The John H. Starin</i> , 191 Fed. Rep. 800, 801	19
<i>The Lamington</i> , 67 Fed. Rep. 752	7
<i>The Lamington</i> , 67 Fed. Rep. 752	13
<i>The Scotland</i> , 105 U. S. 24	13
Wharton's Conflict of Laws, Sec. 356	7
Wheaton on International Law, 8th Ed., Sec. 106 .	7
<i>Wilson v. McNamee</i> , 102 U. S. 572	7
Wildman on International Law	8

Supreme Court of the United States.

October Term, 1913.

THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED, AS OWNER OF THE STEAMSHIP "TITANIC,"	} No. 798.
<i>Petitioner-Appellant.</i>	
WILLIAM J. MELLOR AND HARRY ANDERSON,	
<i>Claimants-Appellees.</i>	

SIRS: Please take notice that on Monday, the 13th day of January, 1913, we shall present to the Supreme Court of the United States, at the opening of court on said day, or as soon thereafter as counsel can be heard, a motion to be allowed to file a brief as *Amicus Curiae* in the above-entitled cause, a copy of which motion is hereto attached.

Dated, January 9, 1914.

Yours, etc.,

HERBERT & MICOU,
1410 H Street N. W.,
Washington, D. C.

GRAHAM & L'AMOREAUX,
42 Broadway,
New York City, N. Y.

Proctors for Louise Robins and other claimants.

To MESSRS. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner-Appellant,

and To MESSRS. HUNT, HILL & BETTS,
Proctors for Claimants-Appellees.

Receipt of a copy of the within notice is hereby admitted this 9th day of January, 1914.

BURLINGHAM, MONTGOMERY & BEECHER,
*Proctors for Oceanic Steam Navigation,
Limited.*

HUNT, HILL & BETTS,
Proctors for Claimants-Appellees.

Supreme Court of the United States.

October Term, 1913.

THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED, AS OWNER OF THE STEAMSHIP "TITANIC,"

Petitioner-Appellant.

WILLIAM J. MELLOR AND HARRY ANDERSON,

Claimants-Appellees.

No. 798.

ON MOTION TO BE ALLOWED TO FILE BRIEF AS *AMICUS CURIAE*.

To the Honorable the Justices of the Supreme Court of the United States :

On behalf of Louise Robins, widow and administratrix, and many other claimants in the proceeding, we ask leave to file a brief as *Amicus Curiae* upon the three questions certified to this court by the United States Circuit Court of Appeals for the Second Circuit in the above-entitled cause. The undersigned represent a number of claimants in this proceeding, the aggregate of whose claims is more than \$700,000, and as the decision of this court of the questions certified will determine whether there is to be any substantial recovery by these claimants, and is consequently of the gravest importance to them, it is respectfully prayed that this motion be allowed.

Respectfully submitted,

BENJ. MICOU,

RICHARD P. WHITELEY,

GEORGE S. GRAHAM,

Counsel for Louise Robins, Administratrix, and other Claimants.

Dated, January 9, 1914.

Supreme Court of the United States.

October Term, 1913.

THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED, AS OWNER OF THE STEAMSHIP "TITANIC,"	} No. 798.
<i>Petitioner-Appellant,</i>	
WILLIAM J. MELLOR AND HARRY ANDERSON, <i>Claimants-Appellees.</i>	

BRIEF FILED AS *AMICUS CURIAE* IN BEHALF OF LOUISE ROBINS, ADMIN- ISTRATRIX, AND OTHER CLAIMANTS.

Status of Case.

This case comes to this court from the Circuit Court of Appeals of the United States for the Second Circuit, said court having certified certain questions of law for determination by this court.

On April 14, 1912, the steamship *Titanic*, owned by petitioner-appellant, a British registered company, collided with an iceberg on the high seas, and early the following morning sank and became a total loss except for certain lifeboats. A large number of the passengers and crew of the said *Titanic* lost their lives.

On October 4, 1912, petitioner filed a petition in the District Court for the Southern District of New York, under Sections 4283-4-5 of the Revised Statutes of the United States and the Statutes supplementary thereto and amendatory thereof, and the 54th and 56th Rules in

Admiralty, to limit their liability under said statutes and rules, alleging that the disaster occurred without the privity or knowledge of the owner.

Two of the claimants, the appellees herein, filed exceptions to the petition. On April 21, 1913, the District Court entered a decree dismissing the petition for want of jurisdiction, and on May 19, 1913, filed a supplemental opinion, and on June 13, 1913, entered a decree dismissing the petition as to the two exceptants only, Mellor and Anderson, appellees herein. From said decree petitioner appealed to the Circuit Court of Appeals, and that court has certified three questions to this court, as follows:

"A. Whether in the case of a disaster upon the high seas, where (1) only a single vessel of British nationality is concerned and there are claimants of many different nationalities; and where (2) there is nothing before the court to show what, if any, is the law of the foreign country to which the vessel belongs, touching the owner's liability for such disaster, such owner can maintain a proceeding under Sections 4283 and 4285 U. S. Revised Statutes and the 54th and 56th Rules of Admiralty?

"B. Whether, if in such a case it appears that the law of the foreign country to which the vessel belongs makes provision for the limitation of the vessel owner's liability, upon terms and conditions different from those prescribed in the Statutes of this country, the owner of such foreign vessel can maintain a proceeding in the courts of the United States, under said Statutes and Rules?

"In the event of the answer to Question B being in the affirmative,

"C. Will the courts of the United States in such proceeding enforce the law of the United States or of the foreign country in respect to the amount of such owner's liability?"

On December 8, 1913, petitioner-appellant and claim-

ants-appellees moved that this cause be advanced on the docket, which motion being allowed, the cause was set for hearing January 5, 1914, after cases already specially set for that day.

Counsel herein filed, under Lord Campbell's Act, a libel in behalf of Louise Robins, administratrix, against the Oceanic Steam Navigation Company (appellant) on to wit May 2, 1912, in the United States District Court for the Southern District of New York, prior to the filing of petition by appellant to limit liability. After the filing of said petition we filed a number of other suits under the same Act. The rights of recovery of these claimants will be materially affected by the determination of the questions certified and we moved to be allowed to file a brief in their behalf as *Amicus Curiae*, and file this brief in accordance with the allowance of that motion.

ARGUMENT.

"Question A."

Question A may be concretely stated as follows:

Can a British ship owner maintain a proceeding in our courts to limit his liability under our statutes for damages resulting from a collision upon the high seas between a British ship and an iceberg, when there is nothing before our courts to show what, if any, is the law of Great Britain touching the owner's liability for such disaster?

Right here it may well be stated that the liability for loss of life and personal injuries arising from the sinking of the *Titanic* is governed by the laws of Great Britain and Ireland. In the first place, the disaster having occurred on the high seas through collision with no vessel or agency of another country, but through collision with an iceberg, the law of the flag of the ship governs the liability for all torts occasioned by the accident (*Crapo*

v. *Kelly*, 83 U. S. 610). Therefore suits for loss of life must be brought under the British Death Act, Lord Campbell's Act, under which we have sued appellant and which Act gives unlimited liability in suits against common carriers for torts upon the high seas as well as upon land. In the second place, the maritime law of this country gives no right of action for the death of a human being on the high seas, caused by negligence. *Butler v. Boston Steamship Company*, 130 U. S. 555. And it has been held by this court that in the absence of an Act of Congress, or a statute of a State, giving such a right of action that no damages can be recovered in Admiralty for such death.

The Harrisburg, 119 U. S. 199.

Therefore, although there be nothing before the court to show what is the liability of the owner under the laws of Great Britain, it is undisputed that the laws of that country must govern the ship owner's liability for any torts occasioned by the collision.

In effect the collision might just as well as have taken place in an English port, as a ship on the high seas is a part of the country to which she belongs.

The Lamington, 67 Fed. Rep. 752;

Crapo v. Kelly, 83 U. S. 610;

Wilson v. McNamee, 102 U. S. 572;

Wheaton on International Law, 8th ed. Sec. 106,
et seq.

Kent's Commentaries, Vol. 1, p. 26;

Wharton's Conflict of Laws, Sec. 356;

Grotius, *De Jure Belli*, Bk. II, Chap. 4, Sec. 13.

Wharton states:

"A ship in the open sea is regarded by the law of nations as a part of the territory whose flag such ship carries."

Wildman, in his *Treatise on International Law*, says:

“Provinces and colonies, however distant, form a part of the territory of the parent state. So of the ships on the high seas.”

And to the same effect are the authorities quoted above.

The liability, therefore, for any tort arising from the sinking of the *Titanic* is governed by the law of the place where the tort was committed. Any suit or proceeding brought in our courts or in the courts of any other country against the ship owner for damages must, therefore, be brought under the British laws, and the rights of claimants and the liability of defendants determined by those laws.

Question A, therefore, resolves itself thus: When the law of a foreign country governs the liability for a tort as committed within the territorial limits of that country, can the law of the forum operate to limit the tortfeasor's liability? Whether the law of the foreign country touching the ship owner's liability be shown to the court or not, would seem to be immaterial. If the tort complained of was committed within the limits of Great Britain (and a British ship in collision with an iceberg upon the high seas is to this extent British territory), then its liability must be governed by British laws.

Northern Pacific R. R. Co. v. Babcock, 154 U. S. 190;

Slater v. Mexican National R. R. Co. 194 U. S. 120;

Mexican Central R. R. Co. v. Eckman, *Guardian*, 205 U. S. 538.

This liability would not be determined by British statutes if the American statutes of limited liability are applicable.

In commenting upon that part of the decision of Judge Holt in which he states:

“The rule that the law of no nation has any extra-territorial effect is universal. The rule that a ship on the high seas is a part of the country to which she belongs is universal. The rule that liability for a tort is governed by the *lex loci delicti* is universal.”

Counsel for the appellant contend that while it is unquestioned that those who have suffered loss by reason of the death of persons on board the *Titanic* must look to the British Death Act for their right of recovery, it does not follow that such right can be enforced in the courts of the United States in the same manner and to the same extent as in the courts of Great Britain. And it is argued that the limited liability statutes of this country, which can not effect the enforcement of the rights of claimants in the courts of Great Britain, can and should apply if claimants choose to resort to our courts for the enforcement of their right. That is to say, that claimants must sue under Lord Campbell's Act, a British statute, for loss of life on the *Titanic* (as it is admitted that the *lex loci delicti* governs), but that this British statute must be limited by certain American statutes limiting liability. Such doctrine would most certainly nullify the rule that the *lex loci delicti* should govern, and is contrary to the principles laid down by this court in many instances. As far back as the learned Chief Justice Taney's day, that eminent jurist, in a case involving the collision of two American-owned vessels in the port of Liverpool, held that when a collision of vessels occurred in an English port, the rights of the parties depend upon the provisions of the British statutes then in force; and if doubt exists as to their true construction, that this court will adopt that which is sanctioned by the courts of Great Britain.

Smith v. Condry, 1 How. 28.

This case is cited with approval by this court in *The China v. Walsh*, 74 U. S. 53, where it is also stated that Sir Robert Phillimore, in *The Halley*, Law Rep. 1868, pt. 2 (Ad. & Ecc.), p. 3, followed Chief Justice Taney's decision and decided that in a case where the owners of a foreign ship sued in the English Admiralty Court, claiming damages for a collision in Belgian waters, the Belgian law, the *lex loci delicti*, must govern.

Very recently, Mr. Justice Holmes, in the case of *Slater v. The Mexican National R. R. Co.*, makes it plain that where the *lex loci delicti* governs and is sued under in a foreign jurisdiction, that any limitations upon liability must be those of the *lex loci delicti*, and not of the *lex fori*.

“ But when such a liability is enforced in a jurisdiction foreign to the place of the wrongful act, obviously that does not mean that the act in any degree is subject to the *lex fori*, with regard to either its quality or its consequences. On the other hand, it equally little means that the law of the place of the act is operative outside its own territory. The theory of the foreign suit is that although the act complained of was subject to no law having force in the forum, it gave rise to an obligation, an *obligatio*, which, like other obligations, follows the person, and may be enforced wherever the person may be found. *Stout v. Wood*, 1 Blachf. (Ind.) 71; *Dennick v. Railroad Co.*, 103 U. S. 11, 18. But as the only source of this obligation is the law of the place of the act, it follows that that law determines not merely the existence of the obligation, *Smith v. Condry*, 1 How. 28, but equally determines its extent. It seems to us unjust to allow a plaintiff to come here absolutely depending on the foreign law for the foundation of his case, and yet to deny the defendant the benefit of whatever limitations on his liability that law would impose. * * * Therefore we may lay on one side as quite inadmissible the notion

that the law of the place of the act may be resorted to so far as to show that the act was a tort, and then may be abandoned, leaving the consequences to be determined according to the accident of the place where the defendant may happen to be caught."

Slater v. Mex. Nat. R. R. Co. 194 U. S. 120. (Mr. Justice Holmes.)

Applying the cogent reasoning of that case to the case at bar, it follows *a fortiori*, that if a plaintiff suing in this jurisdiction upon a foreign law can not deny the defendant the limitations imposed by that foreign law, that it is equally certain that the defendant can only take advantage of the limitations of the *lex loci delicti*, and that such limitations (if any there be that are applicable) and not the limitations of the *lex fori*, are applicable.

As Mr. Justice Holmes well says:

"as the only source of this obligation is the law of the place of the act, it follows that the law determines not merely the existence of the obligation, *but equally determines its extent.*" (Italics ours.)

While it is obviously true that the *lex fori* governs all questions pertaining to the remedy, such as questions of procedure and practice, it is not the *lexi fori* that determines the extent of the liability, but the *lex loci delicti*, as laid down by this court and as cited above in the *Slater* case. Therefore, in the case cited in Question A the ship owner could not maintain a proceeding to limit his liability under our Statutes and Rules, as the court would be without jurisdiction to entertain such proceeding.

Question B.

This question is somewhat ambiguously worded. We presume that the query as to whether the

"owner of such foreign vessel can maintain a pro-

ceeding in the courts of the United States, under said Statutes and Rules "

means under the statutes and rules of the United States and not those of Great Britain. We can hardly conceive that it could be suggested that the ship owner could maintain an independent proceeding to limit his liability in our courts under the English Statutes. Whether he could plead the Merchant Shipping Act of 1894 in an action brought against him in our courts under Lord Campbell's Act is another question and one that we refer to briefly hereafter.

Another reason that leads us to believe that the American statutes and rules are referred to is that proceedings to limit liability under our laws are had under certain sections of the Revised Statutes and the 54th and 56th Rules in Admiralty, so that "under said statutes and rules" would seem to imply the American statutes.

Assuming, therefore, that we correctly understand Question B, it may be concretely stated as follows:

If the laws of Great Britain and of the United States as to limiting liability in case of disaster upon the high seas are different, can the owner of such British vessel maintain a proceeding in our courts to limit his liability under the Statutes and Rules of this country, when the disaster occurred through collision with an iceberg?

The determination of this question is likewise controlled, we submit, by the principle of *lex loci delicti* as laid down above by this court in *Slater v. The Mexican National R. R. Co.* 194 U. S. 120. Since any suit for damages must be brought against the Steamship Company under the laws of Great Britain, and since those laws control the rights of parties interested and the liabilities of the company defendant, our courts would be clearly without jurisdiction to entertain any proceeding

to limit liability under our statutes and rules. The tort having been committed within British territory, the laws of Great Britain only can apply.

American Banana Co. v. United Fruit Co. 213 U. S. 347;

The Eagle Point, 142 Fed. Rep. 453;

The Lamington, 67 Fed. Rep. 752;

Cuba R. R. Co. v. Crosby, 222 U. S. 473.

That this has been the opinion of this court is clearly evident from a close examination of the following cases:

The Scotland, 105 U. S. 24;

The Belgenland, 114 U. S. 355;

and *La Bourgogne*, 210 U. S. 95.

In the case of *The Scotland*, Mr. Justice Bradley, delivering the opinion of this court, said:

“In administering justice between parties it is essential to know by what law or code or system of laws, their mutual rights are to be determined. When they arise in a particular country or State, they are generally to be determined by the laws of that State.”

The learned justice goes on to say that if a collision occurred in British waters, at least between British ships, and the injured party should seek relief in our courts, that we would administer justice according to the British law, so far as the rights and liabilities of the parties are concerned, provided it were shown what that law was. That if not shown, we would apply our own laws to the case. In construing this statement of Mr. Justice Bradley, that where the British law was not shown we would apply our own laws to the case, this court has very recently held:

“The language of Mr. Justice Bradley in *The Scotland*, 105 U. S. 24, with regard to the application

of the *lex fori* to a case of collision between vessels belonging to different nations and so subject to no common law, referred to that class of cases and no others, and was used only in coming to the conclusion that foreign vessels might take advantage of our Limited Liability Act."

Cuba R. R. Co. v. Crosby, 222 U. S. 473 at p. 478.

Mr. Justice Bradley himself qualified his statement as to the applicability of the *lex fori* in such cases by holding that

"if the contesting vessels belonged to the same foreign nation, the court would assume that they were subject to the law of their Nation carried under their common flag, and would determine the controversy accordingly."

Proceeding to discuss at some length to what extent the law of the forum can be applied, Mr. Justice Bradley holds:

"English cases have been cited to show that the courts of that country hold that their statutes prior to 1862, which, in generality of terms, were similar to our own, did not apply to foreign ships. * * * We have examined these cases. So far as they stand on general grounds of argument, the most important consideration seems to be this, that the British legislature can not be supposed to have intended to prescribe regulations to bind the subjects of foreign states, or to make for them a law of the high sea; and that if it had so intended it could not have done it. This is very true. No Nation has any such right. Each Nation, however, may declare what it will accept and, by its courts, enforce as the law of the sea, when parties choose to resort to its forum for redress. And no person subject to its jurisdiction, or seeking justice in its courts, can complain of the determination of their rights by that law, unless they can propound some other law by which

they ought to be judged; and this they can not do except where both parties belong to the same foreign Nation; in which case, it is true, they may well claim to have their controversy settled by their own law. Perhaps a like claim might be made where the parties belong to different Nations having the same system of law. But where they belong to the same country in whose forum the litigation is instituted, or to different countries having different systems of law, the court will administer the maritime law as accepted and used by its own sovereignty."

The Scotland, 105 U. S. 24.

Thus where both ships belong to the same foreign nation

"they may well claim to have their controversy settled by their own law."

And

"if the contesting vessel belong to the same foreign nation, the court would assume that they were subject to the law of their Nation carried under their common flag, and would determine the controversy accordingly."

This reasoning was all had to determine whether the American statutes of limited liability applied to the collision between the *Kate Dyer* and *The Scotland* (ships of different countries), so that the conclusion reached that if the ships had belonged to the same nation the litigants could well claim to have their controversy settled by their own law, is directly applicable to the case at bar.

Again in the case of *The Belgenland*, Mr. Justice Bradley holds:

"Another qualification is that if the maritime law as administered by both nations to which the prospective ships belong be the same in both in respect to any matter of liability or obligation, such law, if

shown to the court, should be followed in that matter in respect to which they so agree, though it differ from the maritime law as understood in the country of the forum; for, as respects the parties concerned, it is the maritime law which they mutually acknowledge."

See also *La Bourgogne*, 210 U. S. 95.

The Eagle Point, 142 Fed. 453.

While the cases of *The Scotland*, *The Belgenland* and *La Bourgogne* were all cases where the ships colliding belonged to different nations having different laws, which made the law of the forum applicable, this court was careful to state the rule that would apply had the vessels belonged to the same nation, that is, that the *lex loci delicti* would govern.

In *Cuba R. R. Co. v. Crosby*, 222 U. S. 473, at p. 478, decided January 9, 1912, this court succinctly re-stated this principle as follows:

"But when an action is brought upon a cause arising outside of the jurisdiction it always should be born in mind that the duty of the court is not to administer its notion of justice but to enforce an obligation that has been created by a different law. *Slater v. Mexican National R. R. Co.* 194 U. S. 120, 126. The law of the forum is material only as settling a limit of policy beyond which such obligations will not be enforced there. With very rare exceptions the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. *American Banana Co. v. United Fruit Co.* 213 U. S. 347, 356. See *Bean v. Norris*, 221 U. S. 485, 486, 487. That and that alone is the foundation of their rights."

Cuba R. R. Co. v. Crosby, 222 U. S. 473, 478.

Contention was made by counsel for appellant before

the Circuit Court of Appeals that the opinion of this court in *The Scotland* and *The Belgenland*, proceeded entirely upon the theory that there was a *contest* between two vessels and not merely a *collision*, and that in case of a collision such as that of *The Titanic*, where the passengers belonged to many nationalities, this diverse citizenship would render the law of the forum operative just as though the vessel had collided with a vessel of another country having different laws from those of Great Britain. Such a contention overlooks entirely the rule heretofore laid down, that the law of the place where the tort was committed governs the liability, and the fact that the whole vessel is to be taken as British territory. The stateroom occupied by a Frenchman would have to be considered as French territory, and that occupied by a German as German territory, in order to sustain this ingenious contention of appellant. And a realization of the fact that the passengers having taken passage in a British steamship owned and operated under the British flag shows that any suits or proceedings must be had under those laws, and that all rights, liabilities and limitations of liability must be determined by those laws.

See *Crapo v. Kelly*, 83 U. S. 610, in which this court stated:

“In the celebrated *Trent* case, occurring in 1862, Messrs. Mason and Slidell were removed from a British private vessel by Commodore Wilkes of the *San Jacinto*, a public vessel of the United States. Great Britain insisted that the rights of a neutral vessel not only had been violated, for which she demanded apology, but she insisted that these persons should be replaced and returned on board a British ship. This was done, and they were actually placed on board a British vessel in or near the harbor of Boston. They were not British subjects, and their return could only have been demanded for the reason

that they had been torn from British soil, *and the sanctity of British soil as represented by a British ship had been violated. Citizenship or residence had no influence upon the question.*" (Italics ours.)

Question C.

The determination of Question C depends, of course, upon the answers to the two preceding questions, and can not be considered independently. If it be decided that the American law of limited liability does not apply, because the rights of the parties are entirely governed by the law of the country of the tort (Great Britain and Ireland), and further, that the American law could not apply whether the British law be made known or not, because the *lex loci delicti* alone can govern, the law of Great Britain and Ireland must be enforced with respect to the amount of the vessel owner's liability.

As to whether in suits under Lord Campbell's Act for unlimited damages, the ship owner could limit his liability under the British Merchant Shipping Act of 1894, would depend upon whether he could bring himself within the provisions of that law. That is, whether he should show that the disaster occurred without the fault or privity of the owner or owners. If the appellant should not be able to show that the disaster occurred without the fault or privity of the owner, unlimited damages could be recovered under the British law, whereas, if appellant should prove that the disaster occurred without the owner's fault or privity, the damages recoverable would be limited to a sum total approximating \$3,000,000 under the Merchant Shipping Act of Great Britain of 1894.

It is clear, however, that no proceeding to limit liability under the English Statute for limited liability (The

Merchant Shipping Act of 1894) could be maintained independently. It would have to be set up as a partial defense in suits under the English law, instituted by claimants against the Steamship Company.

It is contended by appellant before the Circuit Court of Appeals that inasmuch as the Limited Liability Act of 1851, Sections 4283-4-5, U. S. Revised Statutes, and the 54th and 56th Rules of Admiralty allow to appellant-petitioner the privilege not only of seeking the benefits of the statute, but also of contesting its liability in any sum whatever, that the primary issue before the lower court was to determine whether there was any liability at all or not, since a determination that no liability existed would do away with the necessity of a decision upon the question of limited liability. The cases of *Providence & New York Steamship Company v. Hill Manufacturing Company*, 109 U. S. 578, 595, and *The John H. Starin*, 191 Fed Rep. 800, 801, are cited in support of the contention that appellant was entitled to a determination of the question as to whether there was any liability at all or not.

It is perfectly apparent that petitioner-appellant would be entitled, in a proper limited liability proceeding under our Statutes, to have determined first whether there was any liability at all on his part. However, in a case where British Statutes alone apply, the court would be without jurisdiction to entertain any proceeding under Sections 4283-4-5 U. S. Revised Statutes, and the 54th and 56th Rules of Admiralty.

Conclusion.

A brief resume of the ground covered by the three questions certified up to this court for answer shows that there is, in effect, but a single question involved, and that is, can a proceeding under our laws to limit the liability

of the owner of a foreign vessel be maintained in the United States courts where the accident occurs under such circumstances that liability for damages is governed by the laws of the foreign country ? Would the liability be governed by the laws of that country if it could be limited by the laws of the country of the forum ? Unquestionably not. Therefore the courts of this country have no jurisdiction to entertain any proceeding to limit liability under our laws.

Respectfully submitted,

BENJ. MICOU,

RICHARD P. WHITELEY,

GEORGE S. GRAHAM,

Counsel for Louise Robins, Administratrix, and others.



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OFFICE SUPREME COURT U. S.
FILED
JAN 13 1914
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 798

**THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED,
AS OWNER OF THE STEAMSHIP TITANIC**

VS.

WILLIAM J. MELLOR AND HARRY ANDERSON

**ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT**

**BRIEF FOR THE OCEANIC STEAM NAVIGATION
COMPANY, LIMITED**

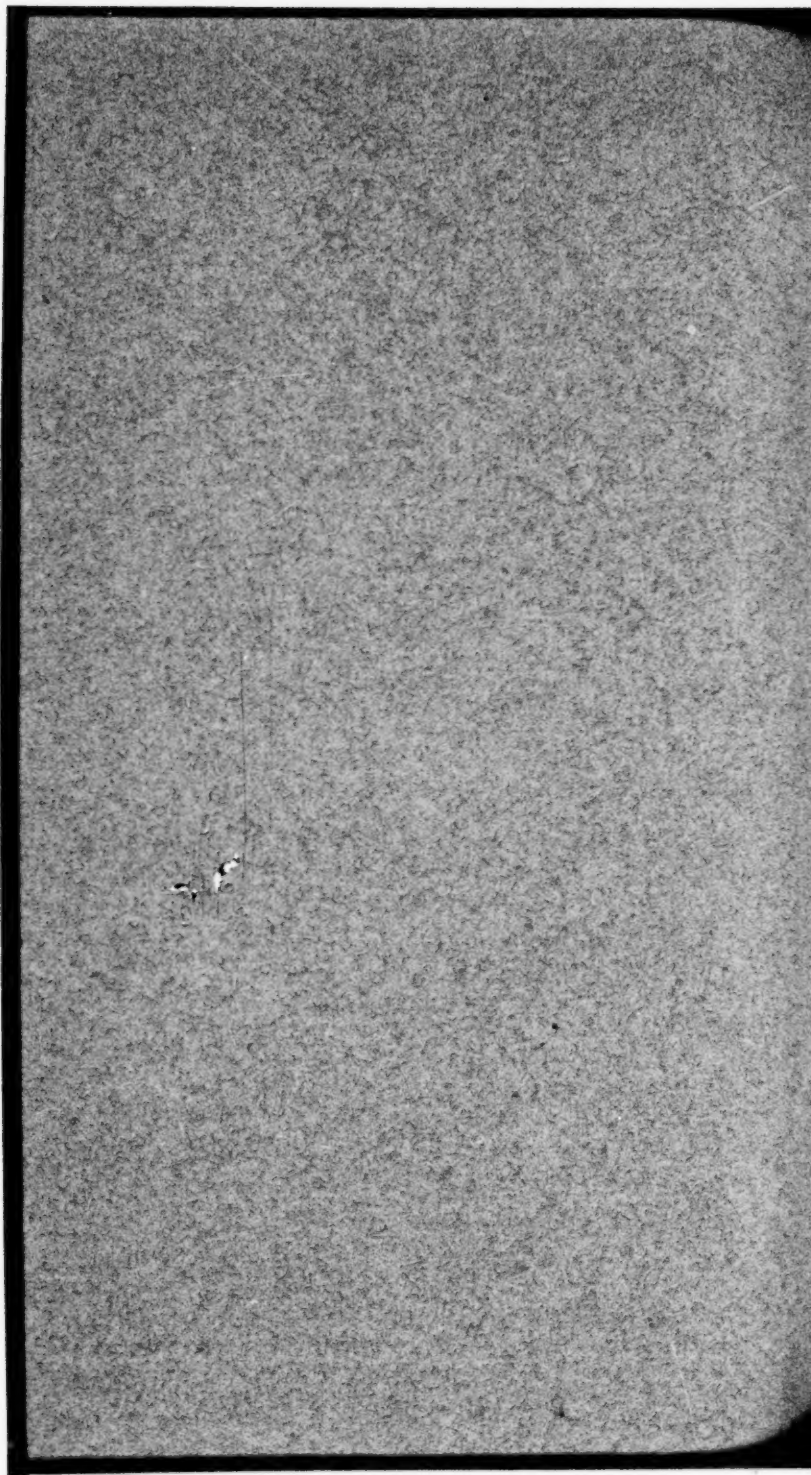
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Proctors for Oceanic Steam Navigation Company, Limited**

CHARLES C. BURLINGHAM

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Of Counsel



SUBJECT INDEX

	PAGE
Statement of facts.....	1-2
Questions certified	2-3
Grounds of decision of HOLT, D. J.....	3-4
U. S. R. S., §§ 4283-5 (Limited Liability Act).....	4-5
54th and 56th Rules in Admiralty, relating to Limitation of Liability.....	5-6
Summary of argument.....	6-7

I.—Limited Liability Act applies equally to American and foreign shipowners; establishes maritime law of the United States to be universally applied in our Courts as expression of our conception of justice..... 8-20

The Scotland—foreign shipowners entitled to benefit of our Limited Liability Act..... 8-11

English cases giving narrow construction of early British statute disapproved by this Court in *The Scotland*.... 11-18

Law of limited liability a part of our maritime code, and applied whether favorable or adverse to foreign ships..... 18-20

II.—Harter Act decisions of this Court controlling authorities in the interpretation of Limited Liability Act..... 20-25

Application of Harter Act to foreign ships, irrespective of nationality, based on broad interpretation previously given Limited Liability Act..... 22-25

III.—Rule of limited responsibility uniformly applied in our Courts—History of cases..... 25-33

IV.—Application of Limited Liability Act not affected by immaterial circumstance that but a single vessel is involved..... 34-44

Dictum of Mr. Justice Bradley in *The Scotland* considered..... 34-39

La Bourgogne—doctrine of law of flag applies only to very limited extent..... 39-42

Claimants' authorities distinguished..... 42-43

V.—Purpose of Limited Liability Act not only to provide limitation, but to enable all parties to be brought into concourse for determination of liability..... 44-46

	PAGE
No question of limitation presented until liability determined.....	46-47
Consideration of law to be applied premature.	
No other law than our own shown.....	47-49

VI.—Question A should be answered in the affirmative; Question B, if answered, in the affirmative; Question C, if answered, The Law of the United States.....	49
---	----

LIST OF CASES

	PAGE
Alaska, The, 130 U. S., 201.....	42
Amalia, The, 1 Moo. P. C. N. S., 471; Br. & Lush., 151.....	14
Belgenland, The, 114 U. S., 355.....	37
Britannic, The, 39 Fed. Rep., 395.....	43
Butler v. Boston SS. Co., 130 U. S., 527.....	17, 19, 45
Carl Johan, The, cited in The Dundee, 1 Hagg. Adm., 109, 113.....	11
Chartered Mercantile Bank of India v. Netherlands India Steam Nav. Co., 10 Q. B. D., 521.....	41
Chattahoochee, The, 173 U. S., 540.....	21, 36
Churchill v. The Ship British America, 9 Ben., 516.	26
City of Norwalk, The, 55 Fed. Rep., 98.....	19
Cohens v. Virginia, 6 Wheat., 264.....	35
Cope v. Doherty, 4 Kay & J., 367; 2 De G. & J., 614.....	12, 13, 38
Corsair, The, 145 U. S., 335.....	18
Cromartyshire v. La Bourgogne, 44 Shipp. Gazette, 31; s. c., 44 <i>Id.</i> , 311.....	32
Cuba Railroad Co. v. Crosby, 222 U. S., 473.....	16
Dundee, The, 1 Hagg. Adm., 109.....	11
Dyer v. National Steam Nav. Co., 3 Ben., 173; 14 Blatch., 483.....	26
Eagle Point, The, 142 Fed. Rep., 453.....	43, 44
General Iron Screw Collier Co. v. Schurmanns, 1 J. & H., 180.....	13, 14
Girolamo, The, 3 Hagg. Adm., 169.....	12
Great Western, The, 9 Ben., 403.....	26, 27
H. F. Dimock, The, 52 Fed. Rep., 598.....	19
Hamilton, The, 207 U. S., 398.....	15, 42
Harrisburg, The, 119 U. S., 199.....	42
Jason, The, 225 U. S., 32.....	23
John Bramall, The, 10 Ben., 495.....	26

	PAGE
Knott <i>v.</i> Botany Mills, 179 U. S., 69.....	23
La Bourgogne, 210 U. S., 95.....6, 7, 9, 11, 15,	
32, 35, 39, 40	
Lamington, The, 87 Fed. Rep., 752.....	42
Levinson <i>v.</i> Oceanic Steam Nav. Co., 15 Fed. Cas.,	
422.....	28, 31
Liverpool Steam Co. <i>v.</i> Phenix Ins. Co., 129 U. S.,	
397.....	48
Lottawana, The, 21 Wall., 558.....	19
Marckwald <i>v.</i> Oceanic Steam Nav. Co., 11 Hun,	
462.....	28
Morrison, <i>In re</i> , 147 U. S., 14.....	19
Norge, The, 156 Fed. Rep., 845.....	30
North Star, The, 106 U. S., 17.....	44
Norwich Co. <i>v.</i> Wright, 13 Wall., 104.....	8
Pollock <i>v.</i> Farmers' Loan & Trust Co., 157 U. S.,	
429.....	35
Providence & N. Y. SS. Co. <i>v.</i> Hill Man'f'g. Co., 109	
U. S., 578.....17, 45, 46, 47	
Queen <i>v.</i> Keyn, 2 Ex. D., 63.....	40
Richardson <i>v.</i> Harmon, 222 U. S., 96.....	8, 18
San Pedro, The, 223 U. S., 365.....	45
Scotland, The, 105 U. S., 24..3, 6, 7, 8, 9, 10, 11, 15,	
16, 17, 19, 24, 26, 27, 28, 33, 34, 48	
Silvia, The, 171 U. S., 462.....	21
Slater <i>v.</i> Mexican National Railroad Co., 194 U.	
S., 120.....	16
State of Virginia, The, 60 Fed. Rep., 1018.....	27, 31
Strathdon, The, 89 Fed. Rep., 374.....	30
Talbot <i>v.</i> Seeman, 1 Cranch, 1.....	48
Thingvalla, The, 48 Fed. Rep., 764.....	30
Thomassen <i>v.</i> Whitwell, 9 Ben., 403.....	26
Wild Ranger, The, 1 Lush., 553.....	39

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 798

The Oceanic Steam Navigation Company,
Limited, as owner of the Steamship
TITANIC

VS.

WILLIAM J. MELLOR and HARRY ANDERSON.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE OCEANIC STEAM NAVIGATION
COMPANY, LIMITED

The certificate states that the cause came before the Circuit Court of Appeals on an appeal from a decree of the District Court for the Southern District of New York dismissing a petition filed by the owner of the steamship *Titanic* to obtain a limitation of petitioner's liability under the statutes of the United States. The statement of facts and questions certified are as follows:

STATEMENT OF FACTS

"The facts out of which these questions arise are as follows:

"The *Titanic*, a British steamship, which had sailed from Southampton, England, on her maiden voyage for New York, collided on the high seas with an iceberg, on April 14th, 1912, and sank the next morning with the consequent loss of the lives of a large number of the passengers and crew. The vessel, her cargo, personal effects of passengers and crew, mails and everything connected

with the vessel, except certain lifeboats, became a total loss. The owner, alleging that the collision and consequent loss were due to inevitable accident and were not caused or contributed to by any negligence or fault on the part of the owner or of those in charge of the steamship and were occasioned and incurred without the privity or knowledge of the owner, filed a petition for relief under Sections 4283, 4284 and 4285 U. S. Revised Statutes and the 54th and 56th Rules in Admiralty.

"Prior to the filing of the petition a number of actions to recover for loss of life and personal injuries resulting from the disaster had been instituted against petitioner, in Federal and State courts. The persons who sustained loss by such collision and sinking were of many different nationalities; many of them were citizens of the United States.

"A copy of the petition is hereto annexed marked 'A.'

"Two of the claimants, one a British subject, the other an American citizen filed exceptions to the petition. Copies of these exceptions are annexed marked 'B' and 'C.'

"The District Court entered a decree dismissing the petition as to these two exceptants, from which decree appeal was duly taken.

"A copy of the decree is hereto annexed marked 'D.'

QUESTIONS CERTIFIED

"The questions or propositions of law upon which this Court desires the instructions of the Supreme Court are:

A. Whether in the case of a disaster upon the high seas, where (1) only a single vessel of British nationality is concerned and there are claimants of many different nationalities; and where (2) there is nothing before the court to show what, if any, is the law of the foreign country to which the vessel belongs, touching the owner's liability for such disaster,-- such owner can maintain a proceeding under Sections 4283, 4284 and 4285 U. S. Revised Statutes and the 54th and 56th Rules in Admiralty.

"B. Whether, if in such a case it appears that the law of the foreign country to which the vessel belongs makes provision for the limitation of the vessel owner's liability, upon terms and conditions different from those prescribed in the Statutes of this country, the owner of such foreign vessel can maintain a proceeding in the Courts of the United States, under said Statutes and Rules?

"In the event of the answer to question B being in the affirmative,

"C. Will the Courts of the United States in such proceeding enforce the law of the United States or of the foreign country in respect to the amount of such owner's liability?"

The first question certified is based upon the facts as stated in the certificate, and the answer to this question must necessarily determine the result of the appeal.

Questions B and C are conditioned upon subsequent proof of a foreign law, and are important, therefore, only as a guide to the lower Courts in the future conduct of the litigation.

It is obvious, however, that in the consideration of question A, and in giving its reasons for its answer thereto this Court may, and we think should, treat the subject broadly. If this course is followed the opinion of this Court in answering question A will probably dispose of the entire subject, including that covered by questions B and C, and for this reason the discussion in our brief will take a wider range than might be considered necessary if it were confined exclusively to question A.

The learned District Judge (Holt, J.) dismissed the petition because he thought *The Scotland*, 105 U. S., 24, an authority which required him to hold that the petitioner's rights and liabilities must be determined solely by British law, since the disaster occurred to a British vessel on the high seas and no vessel of other nationality was involved¹.

Upon principle also he reached the same conclusion because of the application of three rules of law which he considered decisive of the case—(1) the rule that the law of no nation has any extra-territorial effect; (2) the rule

¹ The opinions of the District Court are not yet reported, but for the convenience of this Court have been printed and are submitted herewith.

that a ship on the high seas is a part of the country to which she belongs; (3) the rule that liability for a tort is governed by the *lex loci delicti*.

It is not clear whether he intended to take judicial notice of British law or not; while he states the British law of limited liability, quoting MacLachlan on Shipping as his authority, he does not include a reference to that law in his statement of the facts which he considered essential to his decision.

In a supplemental opinion the District Judge directed the dismissal of the petition only as to the two claimants whose exceptions were then before him.

The sections of the Revised Statutes referred to in the certificate are as follows:

Section 4283. The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, lost, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

Section 4284. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

Section 4285. It shall be deemed a sufficient compliance on the part of such owner with the requirements of this Title relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as

such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease.

U. S. R. S., §§ 4283-5.

The 54th and 56th Rules in Admiralty referred to in the certificate are as follows:

RULES IN ADMIRALTY

54. When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage or forfeiture done, occasioned or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled "An Act to limit the liability of shipowners and for other purposes", now embodied in Sections 4283 to 4285 of the Revised Statutes, the said owner or owners shall and may file a libel or petition in the proper District Court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for payment thereof, into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and

public notice of such monition shall be given as in other cases, and such further notice reserved through the post office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

56. In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage, or injury (independently of the limitation of liability claimed under said act), provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both.

ARGUMENT

We shall argue that Question A should be answered in the affirmative, that if Questions B and C are answered, Question B should be answered in the affirmative, and Question C, The Law of the United States.

The Limited Liability Act of the United States applies equally to American and to foreign shipowners. It establishes the maritime law of the United States to be universally applied in our courts as the expression by Congress of our conception of justice. This view of the statute has been authoritatively settled by the decisions of this Court beginning with *The Scotland* (*supra*), and ending with *La Bourgogne*, 210 U. S., 95.

The narrow construction of the statute adopted by the District Court followed the English decisions as to the application of the early British statute of limited liability, the reasoning and conclusions of which were rejected by this Court in *The Scotland*.

The broad and liberal interpretation of our statute was followed by this Court in its construction of the Harter Act, and the cases arising under that act are controlling authorities in the construction of the Limited Liability Act.

The act has been uniformly applied irrespective of the nationality of the vessels involved, and the precise question here presented has been determined in favor of the foreign shipowner by the lower Federal Courts, and in effect the same question was presented and decided by this Court in favor of the foreign shipowner in *La Bourgogne*.

The *dictum* of Mr. Justice Bradley in *The Scotland* has been misunderstood and misapplied by the District Court.

Irrespective of the limitation which might be applied in case the petitioner should ultimately be held liable, the proceeding should have been maintained under the United States statutes and the Rules in Admiralty.

The decision of the District Court was premature in that no foreign law had been shown, none could be presumed, and judicial notice of none could be taken; and even if a foreign law had been before the Court, the question as to what limitation should be applied had not yet arisen in the proceeding, and might never arise.

The beneficent purpose of our statute to bring all parties into concourse and have the rights and liabilities of all determined in one proceeding required the District Court to entertain and continue the proceeding. Whatever the ultimate rights of the petitioner, it is entitled to make use of the proceeding authorized by the statute and the Rules in Admiralty, and a denial of that right is contrary to the settled principle that the United States Courts sitting in Admiralty are open to the entire world for the determination of all questions of a maritime nature wheresoever and between whomsoever they may arise.

FIRST POINT

THE LIMITED LIABILITY ACT OF THE UNITED STATES APPLIES EQUALLY TO AMERICAN AND TO FOREIGN SHIPOWNERS. IT ESTABLISHES THE MARITIME LAW OF THE UNITED STATES TO BE UNIVERSALLY APPLIED IN OUR COURTS AS THE EXPRESSION BY CONGRESS OF OUR CONCEPTION OF JUSTICE.

The Act was originally passed in 1851 (Act of March 3, 1851, 9 Stat., 635, c. 43). It does not appear to have come before this Court for consideration until twenty years later, when Mr. Justice Bradley, writing the opinion of the Court in *Norwich Company vs. Wright*, 13 Wall., 104, said:

"The Court having jurisdiction of the case, under and by virtue of the Act of Congress, would have the right to enforce its jurisdiction and to ascertain and determine the rights of the parties. For aiding parties in this behalf, and facilitating proceedings in the District Courts, we have prepared some rules which will be announced at an early day" (p. 125).

Accordingly, on May 6, 1872, Rules in Admiralty 54 to 57 were promulgated.

The Limited Liability Act of March 3, 1851, was substantially re-enacted in Sections 4282-9 of the Revised Statutes. The Act was further amended by the Act of June 26, 1884, 23 Stat., 57, c. 121, the effect of which was considered in *Richardson vs. Harmon*, 222 U. S., 96; but neither the revision nor the amendment made any change in the original act material to the present controversy.

It was not until 1881 that this Court was called upon to determine in *The Scotland* (*supra*) whether the Act applies to the owners of foreign as well as of domestic vessels. Upon this question the lower

courts of the United States had reached different conclusions based upon different lines of reasoning. In their interpretation of the British Limited Liability Act as it was prior to 1862, which in generality of terms was similar to our own, the English courts had denied its application to foreign ships. The great extent of the commerce of the United States with foreign nations, conducted very largely in foreign bottoms, made the question one of the utmost importance. The case was argued by eminent counsel, including Mr. William Allen Butler on one side and Mr. James C. Carter and Mr. Joseph H. Choate on the other. The unanimous decision of this Court was announced by Mr. Justice Bradley, in an opinion which finally set at rest all questions as to the right of foreign shipowners to avail themselves of the provisions of the act.

As this Court said in *La Bourgogne* (*supra*):

"It was settled in *The Scotland*, 105 U. S., 24, that a foreign ship is entitled to obtain in the Courts of the United States the benefit of the law for the limitation of liability of shipowners." (p. 115.)

In the course of his opinion in *The Scotland* Mr. Justice Bradley said:

"The act of Congress creating a limited responsibility of shipowners in certain cases, first passed March 3, 1851, and reproduced in secs. 4282-4289 of the Revised Statutes, is general in its terms, extending to all owners of vessels without distinction or discrimination. * * * This statute declares the rule which the lawmaking power of this country regards as most just to be applied in maritime cases (p. 30) * * * But it is enough to say, that the rule of limited responsibility is now our maritime rule. It is the rule by which, through the Act of Congress, we have announced that we propose to administer justice in maritime cases. We see no reason, in the absence of any different law governing the case, why it should not be applied to foreign ships as well as to our own, whenever the parties choose to resort to our Courts for redress" (p. 31).

And after considering the English cases and the arguments which had there been successfully advanced in favor of excluding foreign shipowners from the benefit of the British Act, Mr. Justice Bradley concluded:

" But there is no demand for such a narrow construction of our statute, at least of that part of it which prescribes the general rule of limited responsibility of shipowners. And public policy, in our view, requires that the rules of the maritime law as accepted by the United States should apply to all alike, as far as it can properly be done. If there are any specific provisions of our law which cannot be applied to foreigners, or foreign ships, they are not such as interfere with the operation of the general rule of limited responsibility. That rule, and the mode of enforcing it, are equally applicable to all. They are not restricted by the terms of the statute to any nationality or domicile. We think they should not be restricted by construction " (p. 33).

In the light of this opinion it is surprising that any question should now be raised as to the right of the petitioner to the benefit of the American Limited Liability Act, and were it not for the magnitude of the disaster and the smallness of the fund to which claimants are entitled to resort in the event of the liability of the petitioner being established, it can hardly be supposed that an attempt would now be made to reopen the question.

Claimants attempt to distinguish *The Scotland* from the case at bar upon the facts. In *The Scotland*, the *Kate Dyer*, an American ship, was sunk on the high seas as the result of a collision with the British steamship *Scotland*. In the present case a British steamship was sunk by collision with an iceberg on the high seas; no vessel of American or other nationality was involved. The vessels involved in *The Scotland* were of different nationalities, but this circumstance is insignificant except as it resulted in a diversity of nationality of *parties*, a diversity which is found equally in both cases. It is, however, by reason of this difference in the facts of the two cases that the

claimants seek to avoid the result of this Court's decision in *The Scotland* that the American Limited Liability Act is to be applied to foreign as well as domestic shipowners. They contend that the British owner of the *Scotland* was held entitled to the benefit of the American act because an American vessel was involved, and that the same rule was applied in *La Bourgogne* because the vessels in collision there were of different nationalities.

Perhaps this Court might have placed its decision in *The Scotland* upon a narrower ground. It did not do so, but based its decision squarely upon the broad ground that Congress had prescribed the general rule of limited responsibility of shipowners, had made this rule a part of the maritime law as accepted by the United States, a rule which it considered most just to be applied in maritime cases. Thus this Court determined once for all that the benefit of the Limited Liability Act was to be extended to all owners of vessels without distinction or discrimination. And it expressly declared that as the terms of the statute were not restricted by any nationality or domicile neither should they be restricted by construction.

The English cases which had previously construed the British limited liability act and refused to extend its provisions to foreign shipowners were strongly urged upon this Court in *The Scotland* in support of a narrow construction of our law. The conclusions reached in those cases and the arguments advanced in their support were completely rejected by this Court. A consideration of those arguments may be of use in view of the arguments now once more advanced to induce this Court to give a narrow construction to our own Act.

The English statutes prior to 1862, as Mr. Justice Bradley said, "in generality of terms were similar to our own" (*The Scotland, supra*, p. 31). In *The Carl Johan*, cited in *The Dundee*, 1 Hagg. Adm., 109, 113, which was the case of a

British vessel run down by a Swedish vessel, the Court held that the British statute was a law as to British ships but not as to foreign ships nor for foreign owners, saying, "It was a measure evidently of policy, and established by countries for the encouragement of their own maritime interests."

The case is again referred to in *The Girolamo*, 3 Hagg. Adm., 169, 187, where Lord Stowell is quoted as saying:

"That the new rule introduced by the 52 Geo. III was one of domestic policy, and that with reference to foreign vessels, it only applied in cases where the advantages and disadvantages of such a rule were common to them and to British vessels."

In the case last cited the *Girolamo*, an Austrian vessel with a licensed pilot on board, collided with a British vessel in English waters. It was held that the British statute which relieved the owner of any vessel of liability for the act of a licensed pilot applied only to British vessels and afforded no protection to the foreign owner of the *Girolamo*.

In *Cope vs. Doherty*, 4 Kay & J., 367, a collision had taken place on the high seas between two American vessels, the *Tuscarora* and the *Andrew Foster*. The *Foster* with her cargo became a total loss. The owners of the *Tuscarora* sought to obtain the benefit of the British limited liability act. In opposition it was contended that the plaintiffs being foreigners and the collision having taken place on the high seas out of the jurisdiction of England, the case must be governed, not by the municipal law of England but by the general rule of international law in cases of collision, namely liability to make full compensation. It was urged that the British act "was our own municipal law, intended for our own subjects, and did not extend to foreigners"; that "*prima facie* all such acts are limited to the subjects of the

country for which they are passed, and do not extend to foreigners. 'It is never to be presumed, unless the words are so clear that there can by no possibility be a mistake, that the British Legislature exceeded that power which properly belongs to it', viz.: 'to legislate for its own subjects all over the world, and as to foreigners within its jurisdiction, but no further' " (p. 370).

The Court approved of the arguments thus advanced and held that the British law had no application. As to the suggestion which was made that the American law was identical with the British, the Court said that as this was not averred, no notice should be taken of it, but that if it were averred and proved it would be competent to administer American law between Americans; but as between the American owners and the English cargo owners who were claimants, no limitation of liability could be allowed. Upon appeal the decision was affirmed by the Lord Justices in 2 De G. and J., 614.

In *General Iron Screw Collier Co. vs. Schurmanns*, 1 J. & H., 180, a Dutch ship was sunk by collision with a British ship in British waters. Limitation of liability was sought by the owner of the Dutch vessel. The Court, while repeating the views which had been expressed in *Cope vs. Doherty* that the British act would have no application to a collision between a British and a foreign ship on the high seas, decided that it was otherwise where the collision took place within the three-mile limit, and that accordingly the foreign owner was entitled to limit his liability under the act.

The English Courts had thus passed upon every question which could arise as to the application of the Act to foreign vessels except that of the right of a British ship-owner to limit his liability in case of a collision with a foreign vessel upon the high seas. It had, however, been very strongly intimated in *Cope v. Doherty, supra*, and

General Iron Screw Collier Co. v. Schurmanns, *supra*, that the Act would not be applied even in such a case. In this state of the decisions, the Act was amended and the words "the owners of any ship, whether British or foreign" substituted for the words "no owner of any sea-going ship."

The question of the effect of the amendment at once arose and was decided by the Privy Council in *The Amalia*, 1 Moo. P. C. N. S., 471; Br. and Lush., 151. In that case the British steamer *Amalia* was in collision with a Belgian steamer in the Mediterranean; the Belgian vessel was lost. Proceedings were taken by the owners of *The Amalia* to limit their liability, and it was held that they were entitled to the benefit of the Act. It was contended that the Legislature had no power to restrict the common natural rights of foreigners except as to matters occurring within the limits of British territory, and, therefore, the words "within British jurisdiction" must be implied. This contention, however was rejected by Dr. Lushington in his decision, which was affirmed by the Privy Council. Lord Chelmsford said:

"And it may be asked, what breach of international law or interference with the natural rights of foreigners is produced by the Legislature saying that all suitors having recourse to our courts to obtain damages for an injury from a person not himself actually in fault but being responsible for the acts of his servants, shall recover only to the value of the thing by which the loss or damage was occasioned, estimated in a particular manner?" (p. 159).

The result of this decision is thus summarized by Mr. Marsden in his work on Collisions at Sea, 6th ed., 155:

"The Act applies in all cases of collision, whether the ships are both British, or both foreign, or one British and one foreign."

We have referred thus in detail to these English cases, not because they are in themselves of value, but because

in view of their careful consideration by this Court before reaching its decision in *The Scotland*, it is important to observe the reasoning upon which they proceeded and which this Court repudiated. The striking similarity between the reasoning of these cases and that of the claimants here is at once evident. Although the English cases depended to a certain extent upon the peculiar terms of the British Act, the English Courts relied upon the same principles as those upon which the District Court bases its decision. The law of the flag, and the presumed non-extra-territoriality of all legislation are the principles upon which both depend for the narrow construction of their respective acts.

Perhaps the chief fallacy at the base of such reasoning is the failure to discriminate between laws affecting transactions occurring on land, within the jurisdiction of a particular nation, and transactions on the high seas, out of the jurisdiction of any particular nation. The high seas are *communis juris*, and *prima facie* subject to the laws of every nation. Of course, not every law is intended to govern the high seas, but where its terms are sufficiently broad, a law will be applied on the high seas unless it is clearly shown that it was otherwise intended. The principle of the law of the flag is important only as carrying on to the high seas laws which by their terms would otherwise not be effective there. Thus the law of the flag was resorted to in *The Hamilton*, 207 U. S., 398 and in *La Bourgoigne* (*supra*) to confer a right of action for death on the high seas which would otherwise be non-existent. But when any nation has passed an act declaring the maritime law to be administered in its Courts, that law is just as effective on the high seas as within its actual territorial domain so far as relates to all controversies that may be brought before its Courts for decision.

That this was the purpose of Congress in passing our Limited Liability Act was expressly declared by this Court in *The Scotland*, and the reasoning of that decision does not call for re-examination.

Even in England, when the purpose of its legislature to make its Act apply alike to foreign as well as to domestic shipowners was made clear by the amendment of 1862, the fancied difficulties arising from the rule of non-extra-territoriality and the law of the flag were swept away, and the law has ever since been applied regardless of the nationality of the vessels concerned. The amendment of 1862 was necessary to give the foreign owner the benefit of the Act only by reason of the narrow view of the Act taken by the English Courts, a course which in *The Scotland* this Court refused to follow.

But even without reference to the distinction which exists between legislation affecting the high seas and that affecting transactions upon land, the principle of *lex loci delicti* is not controlling in the construction of such a statute as the Limited Liability Act.

While it cannot be doubted that the law of the flag, namely, the law of Great Britain, will be enforced in our Courts so far as relates to the creation of the right, in enforcing the obligation thus created the law of the forum, namely, the law of the United States, determines the extent to which such obligation will be enforced in our Courts. This is clearly expressed in the opinion of this Court in *Cuba Railroad Co. v. Crosby*, 222 U. S., 473, where the Court said, at page 478:

"But when an action is brought upon a cause arising outside of the jurisdiction it always should be borne in mind that the duty of the Court is not to administer its notion of justice but to enforce an obligation that has been created by a different law. (*Slater v. Mexican National Railroad Co.*, 194 U. S., 120, 126.) The law of the

forum is material only as setting a limit of policy beyond which such obligations will not be enforced there."

The United States Limited Liability Act has set a limit of policy beyond which the obligations arising under the law of Great Britain will not be enforced in the courts of the United States. Our statute was declarative of our national conception of justice and fixes the maritime law to be applied in all such cases in our courts.

From the very beginning the act has been the object of one attack after another by those who sought to narrow its construction and limit its application. As was said in *Butler v. Boston S. S. Co.*, 120 U. S., 527, 550:

"Various attempts have been made to narrow the objects of the statute, but without avail. It was first contended that it did not apply to collisions. This pretence was disallowed by the decision in *Norwich Company v. Wright*, 13 Wall., 104. Next it was insisted that it did not extend to cases of loss by fire. This point was overruled in the case of *Providence & New York Steamship Co. v. Hill Man'g Co.*, 109 U. S., 578. Now it is contended that it does not extend to personal injuries as well as to injuries to property."

But this Court has uniformly adhered to the broad and liberal rule of construction laid down in *The Scotland*. The spirit in which the act is to be administered is shown by the following passage, from the opinion of this Court in *Providence & New York S. S. Co. v. Hill Man'g Co.*, 109 U. S., 578, 588:

"In these provisions of the statute a scheme of laws and regulations for the benefit of the shipping interests, the value and importance of which to our maritime commerce can hardly be estimated. Nevertheless, the practical value of the law will largely depend on the manner in which it is administered. If the courts having the execution of it administer it in a spirit of fairness, with a view of giving the shipowners the full benefit of the immunities intended to be secured by it, the encouragement it will afford the commercial operations (as before stated) will

be of the last importance; but if it is administered with a tight and grudging hand, construing every clause most unfavorably against the shipowner, and allowing as little as possible to operate in his favor, the law will hardly be worth the trouble of its enactment."

That such a construction of the act is in accordance with the purpose of Congress clearly appears from the fact that when the Act of June 26, 1884, was passed the application of the Limited Liability Act, instead of being narrowed was further extended to include non-maritime torts. *Richardson v. Harmon*, 222 U. S., 96.

While in this case the application of the Limited Liability Act is favorable to the foreign shipowner, it must be remembered that as this Court said in *The Scolland*, *supra*, page 31:

"Of course the rule must be applied, if applied at all, as well when it operates against foreign ships as when it operates in their favor."

Instances where the application of the American Act would be unfavorable to the foreign shipowner can be readily suggested. If, for example, the *Titanic* had collided with and sunk the *Mauretania* on the high seas with great loss of life and property on board the *Mauretania*, but with little or no damage to the *Titanic*, the result of applying the American Limited Liability Act would be to create a fund in the limitation proceeding of upwards of \$7,500,000; whereas, under British law, the liability could not exceed, roughly, one-third of that amount. Again, let us assume that the *Titanic* in the supposed case which we have just given, was owned by a single ship corporation—a not unusual situation abroad—and that her owner having large liabilities and being in embarrassed circumstances is petitioned into bankruptcy. The death claimants having no lien upon the vessel (*The Corsair*, 145 U. S., 335) are unable to file a libel against her. At-

tachment proceedings would be vacated by the bankruptcy. The proceeds of the sale of the vessel are, accordingly, distributed among all the creditors of the Company. But, if the American Limited Liability Act were applicable the petition could be filed under that Act with the result that the proceeds of the vessel would be reserved for the exclusive benefit of those suffering damage by reason of the disaster. While such a proceeding is commonly instituted by the shipowner, the right is not exclusively conferred upon him. *The Scotland* (*supra*, p. 34); *The H. F. Dimock*, 52 Fed. Rep., 598; *In re Morrison*, 147 U. S., 14, 22; *The City of Norwalk*, 55 Fed. Rep., 98, 113.

In *Butler v. Boston S. S. Co.*, 130 U. S., 527, this Court again considered the construction of the Limited Liability Act and gave its approval to the principles which it had laid down in the earlier cases. Mr. Justice Bradley said:

"The law of limited liability, as we have frequently had occasion to assert, was enacted by Congress as a part of the maritime law of this country, and therefore it is co-extensive, in its operation, with the whole territorial domain of that law. *Norwich Co. v. Wright*, 13 Wall., 104, 127; *The Lottawana*, 21 Wall., 558, 577; *The Scotland*, 105 U. S., 24, 29, 31; *Providence & New York Steamship Co. v. Hill Man'g. Co.*, 109 U. S., 578, 593" (p. 555).

The opinion then quotes from *The Scotland*:

"But it is enough to say, that the rule of limited responsibility is now our maritime rule. It is the rule by which, through the Act of Congress, we have announced that we propose to administer justice in maritime cases" (p. 556).

And after considering the principles stated in the cases cited, the conclusion is expressed—

"It being clear, then, that the law of limited liability of shipowners is a part of our maritime code, the extent

of its territorial operation (as before intimated) cannot be doubtful. It is necessarily co-extensive with that of the general admiralty and maritime jurisdiction, and that by the settled law of this country extends wherever public navigation extends--on the sea and the great inland lakes, and the navigable waters connecting therewith" (p. 557).

In the case at bar a Court of Admiralty of the United States is asked, in the exercise of its general admiralty and maritime jurisdiction, to apply the law of limited liability of shipowners as a part of our maritime code to a disaster occurring on the high seas, and, hence, within the territorial operation of our maritime code.

While it is true that the proceeding is instituted by the petitioner, it must be remembered that the petitioner is in reality in the position of a defendant and is not voluntarily coming into the Courts of the United States seeking the benefit of the Act. As appears from the certificate, actions had been begun against the petitioner by claimants in both state and federal courts for loss of life and personal injuries. In those suits the petitioner might have set up the Limited Liability Act as a defense and, while it has adopted the other procedure authorized by the rules of this Court in instituting a limitation proceeding, its essential position as a defendant remains unchanged.

SECOND POINT

THE DECISIONS OF THIS COURT UNIFORMLY APPLYING THE HARTER ACT, IRRESPECTIVE OF THE NATIONALITY OF THE VESSEL INVOLVED, ARE CONTROLLING AUTHORITIES IN THE CONSTRUCTION OF THE LIMITED LIABILITY ACT.

Soon after the passage of the Harter Act this Court was called upon to consider the same question which had

arisen under the Limited Liability Act as to the application of the statute to foreign vessels. The language of the Harter Act is more specific in its definition of the vessels to which it is applicable than the Limited Liability Act. The third section provides:

"That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters," etc. (Act of February 13, 1893, 27 Stat. L., 445).

In *The Silvia*, 171 U. S., 462, 465, it was held that the Harter Act applied to foreign vessels carrying goods to or from a port of the United States. In that case a foreign vessel was given the benefit of the act, although she had sailed from a foreign port and the damage had occurred on the high seas. The same question was considered more at length in *The Chattahoochee*, 173 U. S., 540, 550, where the Court said:

"The reasons which influenced this court to hold in the case of *The Scotland*, 105 U. S., 24, that the Limited Liability Act applied 'to owners of foreign as well as domestic vessels, and to acts done on the high seas, as well as in the waters of the United States, apply with even greater cogency to this act. 'In administering justice,' said Mr. Justice Bradley, p. 29, 'between parties, it is essential to know by what law, or code, or system of laws, their mutual rights are to be determined. When they arise in a particular country or State, they are generally to be determined by the law of that State. Those laws pervade all transactions which take place where they prevail, and give them their color and legal effect. * * * But, if a collision occurs on the high seas, where the law of no particular State has exclusive force, but all are equal, any forum called upon to settle the

rights of the parties would *prima facie* determine them by its own law, as presumptively expressing the rules of justice: * * * if it be the legislative will that any particular privilege should be enjoyed by its own citizens alone, express provision will be made to that effect. * * * But the great mass of the laws are, or are intended to be, expressive of the rules of justice, and are applicable alike to all. * * * But there is no demand for such a narrow construction of our statute,' (as was given by the English Courts to their Limited Liability Act,) 'at least to that part of it which prescribes the general rule of limited responsibility of shipowners. And public policy, in our view, requires that the rules of maritime law as accepted by the United States should apply to all alike, as far as it can properly be done. If there are any specific provisions of our law which cannot be applied to foreigners, or foreign ships, they are not such as interfere with the operation of the general rule of limited responsibility. That rule and the mode of enforcing it are equally applicable to all. They are not restricted by the terms of the statute to any nationality or domicile. We think they should not be restricted by construction.' It will be observed that the language of the Harter Act is more specific in its definition of the vessels to which it is applicable, than the Limited Liability Act, which simply uses the words 'any vessel,' whereas, by the third section of the Harter Act, it is confined to 'any vessel transporting merchandise or property to or from any port in the United States.' Where Congress has thus defined the vessels to which the act shall apply, we have no right to narrow the definition. It may work injustice in particular cases where the exemptions are accorded to vessels of foreign nations which have no corresponding law, but this is not a matter within the purview of the courts. It is not improbable that similar provisions may ultimately be incorporated in the general law maritime. Indeed, the act has been already held by this Court applicable to foreign as well as to domestic vessels. *The Silvia*, 171 U. S., 462. See also *The Elona*, 64 Fed. Rep., 850; *The Silvia*, 68 Fed. Rep., 230."

No one would question the application of the Harter Act to the *Titanic*. The liability of her owner to the shippers of cargo on board her is fixed and determined by the provisions of that act.

But if the Harter Act will be applied by our courts so

as to relieve the owner of the *Titanic* from any liability whatever to cargo owners, upon what principle can the benefit of the Limited Liability Act be refused? As we have seen, this Court in determining that the Harter Act was applicable to foreign ships based its decision upon the broad interpretation previously given to the Limited Liability Act. It would be a strange reversal of reasoning now to hold that although the Harter Act was applicable, the Limited Liability Act was not.

While the cases have been but few in which the Limited Liability Act has been applied where but a single foreign vessel was involved, the Harter Act has perhaps been applied more frequently in that class of cases than in any other. A very recent case is *The Jason*, 225 U. S., 32, where a Norwegian steamship stranded off the south coast of Cuba while on a voyage from Cuba to New York.

The difference between the two acts referred to in *The Chattahoochee*, *supra*, does not make the decisions under the Harter Act any the less controlling precedents. The Harter Act, it is true, is confined to "any vessel transporting merchandise or property to or from any port in the United States," while the Limited Liability Act uses the words "any vessel," but the sole effect of this is to make the Harter Act more limited in its application.

So far as the reasoning which governed the District Court is concerned, it applies equally to either act. Of similar objections to the application of the Harter Act this Court said in *Knott v. Botany Mills*, 179 U. S., 69, 76:

"It was argued that this provision imposing a penalty would cover a refusal to give a bill of lading without the clauses prohibited by the first section: and could not extend to acts done in a foreign port out of the jurisdiction of the United States. But whether that be so or not, (which we are not required in this case to decide), it affords

no sufficient reason for refusing to give full effect, according to what appears to us to be their manifest meaning, to the positive words of the first section, which enact, as to 'any vessel' transporting merchandise or property 'between ports of the United States and foreign ports,' that all stipulations relieving the carrier from liability for loss or damage arising from negligence in the loading or stowage of the cargo shall not only be unlawful, but 'shall be null and void and of no effect.'

"This express provision of the act of Congress overrides and nullifies the stipulations of the bill of lading that the carrier shall be exempt from liability for such negligence, and that the contract shall be governed by the law of the ship's flag."

Attention was called by the learned District Judge to the supposed differences in the purpose of Congress in passing the Limited Liability Act and the Harter Act, and the claimants' brief in the Circuit Court of Appeals contained elaborate quotations from the *Congressional Record* of the period. Whatever weight might otherwise be given to the discussions in Congress, it seems now too late to attempt to reverse the settled interpretation of the two acts. If it be true that the sole purpose of Congress in passing the Limited Liability Act was to encourage American shipping, while in passing the Harter Act its intention was to put a restraint upon foreign ship owners, it remains true, nevertheless, that this Court has interpreted both Acts alike, and upon the same reasoning, as applying equally to foreign and domestic ship owners. It is now too late to urge that Congress never intended to give to foreigners the benefit of the Limited Liability Act. That construction was rejected once for all in *The Scotland*, where this Court found that the statute was not restricted in terms to any nationality, and as a matter of public policy held that its provisions should be applied to all alike.

But if it be said that the application of the Harter Act to the case of a single foreign vessel suffering damage

on the high seas can be justified because of the interest of the United States either in the making of the contract of transportation or in its performance, the same reasoning no less supports the application of the Limited Liability Act in this case. The *Titanic* had sailed from a foreign port for New York and the performance of its contract of transportation was to be completed by the delivery of the passengers and their baggage and the cargo at New York. Unquestionably the Harter Act was applicable so far as related to its cargo. That act determined not only how far the petitioner could be relieved from liability for the loss of cargo, but was also effective in making lawful or unlawful the provisions of its bills of lading. The same principles which make the Harter Act the measure of the petitioner's liability to cargo owners entitle the petitioner to the benefit of the Limited Liability Act.

THIRD POINT

THE RULE OF LIMITED LIABILITY AS PRESCRIBED IN THE AMERICAN LIMITED LIABILITY ACT HAS BEEN APPLIED IN EVERY CASE WHICH HAS COME BEFORE THE COURTS OF THE UNITED STATES IRRESPECTIVE OF THE NATIONALITY OF THE VESSEL OR ITS OWNER.

Such a uniform interpretation of the act is in itself entitled to no little weight, especially in view of the learning and ability of many of the Judges who have considered it. In some of the earlier cases, it is true, the act itself was held not to apply, but the foreign ship owner was given the benefit of the rule of limited liability prescribed therein, upon the theory—subsequently rejected—

that the rule was a part of the general maritime law irrespective of statute.

Judge Benedict of the District Court for the Eastern District of New York was one of the pioneers in the interpretation of the Act. Before him first came the cases of *The Scotland* (*supra*), and of *The Great Western* (*supra*). In March, 1878, in *The Great Western* (reported in the District Court as *Thomassen vs. Whitwell*, 9 Ben., 403), he decided that the owner of the *Great Western*, a British steamer which came into collision with the Norwegian bark *Daphne*, on the high seas, was not entitled to the benefit of the act, which was not to be given an extra-territorial effect. He held, however, that there was a general maritime law which entitled the shipowner to abandon the ship and freight and thereby to be released from liability. But he considered that the act of the owner in selling the vessel deprived him of the right to obtain a limitation of his liability.

In *The Scotland* (reported below as *Dyer vs. National Steam Nav. Co.*, 3 Ben., 173), the question of limitation was not discussed or considered. In the Circuit Court, reported in 14 Blatch., 483, Judge Blatchford found it unnecessary to determine whether the act applied to the owners of a foreign vessel because he considered that the failure of the owner to surrender the vessel deprived it of any right to avail itself of the act. In *The John Bramall*, 10 Ben., 495, a British steamer stranded on Little Gull Island at the mouth of Long Island Sound. Judge Benedict held that as the stranding took place within the territorial limits of the United States, the Limited Liability Act was applicable. This case was decided in June, 1879. In *Churchill vs. The Ship British America*, 9 Ben., 516, Judge Benedict followed his decision in *Thomassen vs. Whitwell* (*supra*) and held that while the owners of the *British America*, the

British vessel which had been in collision with the American brig *Carrie Winslow* on the high seas, was not entitled to the benefit of the American Limited Liability Act, the rule of the general maritime law should be applied in their favor. This decision was rendered in May, 1878.

Judge Benedict's decisions were reviewed by this Court in *The Scotland* (*supra*), and *The Great Western* (*supra*), with the result that Judge Benedict's conclusion that a foreign shipowner was entitled to limit its liability upon surrendering the vessel and its pending freight was approved; his reasoning, however, was not adopted, the right of the foreign shipowner being made dependent, not upon any assumed rule of general maritime law, but upon the provisions of the Limited Liability Act.

Such being the history of the cases which had arisen involving the question of the right of a foreign shipowner to limit his liability, Judge Benedict was again called upon, in 1894, to reconsider the subject in *The State of Virginia*, 60 Fed., 1018. The British steamship *State of Virginia* stranded on Sable Island, and a proceeding was brought by her owner, a British corporation, in the District Court for the Eastern District of New York, to limit its liability. The question presented in that proceeding was thus stated by Judge Benedict:

"Whether a British owner of a British ship, being proceeded against in an American court by both British and American cargo owners, in respect to a loss of cargo occurring in British waters, can claim the limitation of liability provided by the statutes of the United States, or whether the limitation of this liability is to be determined by the law of Great Britain, there being a statute of Great Britain whereby the liability of a ship owner is limited to £8 per ton of gross registered tonnage."

As to this question Judge Benedict concluded:

"No objection being taken to the method adopted for presenting this question for the decision of the court upon this question, I have given it due consideration; and my

opinion is that the extent of the liability of the shipowner, in a case like this, is determined by the statutes of the United States, and not by the statutes of Great Britain."

No appeal was taken from this decision, and prior to the opinion of the District Court in this case it had never been overruled or even questioned.

Even before the decision of this Court in *The Scotland*, Judge Shipman, in the Circuit Court for the Southern District of New York, had occasion to consider the application of the Limited Liability Act to foreign ship-owners (*Levinson vs. Oceanic Steam Navigation Co.*, 15 Fed. Cas., 422). The facts of the disaster therein involved do not appear in the report of the case in the Federal Cases. They are found, however, in *Marckwald vs. Oceanic Steam Navigation Co.*, 11 Hun, 462, a case arising out of the same accident. The British steamer *Atlantic*, owned by the Oceanic Steam Navigation Company—which it is interesting to note is the same company as the petitioner here—was wrecked on the coast of Nova Scotia. Limitation proceedings were brought by the company in the District Court for the Southern District of New York, and resulted in a final decree limiting the liability of the owner. Subsequently a suit was brought by Levinson, a passenger, against the company in the Circuit Court for the Southern District of New York, and the defendant pleaded in bar the final decree in the limitation proceeding. The Court held that the decree was a bar to the prosecution of the action.

In order to reach this result, Judge Shipman was compelled to consider the meaning and effect of the Limited Liability Act. When it is remembered that his decision was rendered several years before this Court had expressed its views in *The Scotland*, the clearness of Judge

Shipman's reasoning and the soundness of his conclusion are all the more remarkable. In the course of his opinion, Judge Shipman said:

"This statute of 1851 has been discussed at length by the counsel. It seems to me to have been a limitation of the common law liability of common carriers by sea. It is well understood that at common law there was no limitation upon the liabilities of such common carriers, but that the amount which they were liable to pay was limited only by the judgments which might be rendered against them. Congress, in 1851, saw fit by statute to limit that liability, and the statute seems to have been a modification or alteration of the common law in regard to the extent of liability of ship owners for the negligence of their officers and crew. Congress also saw fit to adopt the same limitation which had previously existed in the several maritime countries of Europe. The statute which was passed was the adoption by legislative authority of a new principle of law so far as this country is concerned, but one which has been the rule in the admiralty courts of foreign countries.

"The question, then, is whether this limitation of the liability of common carriers by sea applies only to American vessels, and was merely a municipal regulation, or whether it was the adoption of a general principle. Now, neither from the language of the statute of 1851, nor upon principle, can I see that this limitation of liability was local, or that the legislation was municipal. There was nothing local or municipal in its character. The statute was not in terms confined to American vessels. It had a wider scope and was a modification by legislative enactment of the common law, in regard to a subject over which Congress had jurisdiction. If a modification of the common law liabilities of carriers by land was provided by the statute of the state which had jurisdiction over such corporations, it would have been binding upon all courts of the state; it would have been the *lex fori*, the modification would have been a general one, and when an action was brought before a court of the state, the court would have been prohibited from exceeding the liabilities which the legislature of the state had limited. So, this statute being a modification of the common law of a general and universal character, it is binding upon all courts in this country, and they are limited or restrained from proceeding to give judgment beyond the limit of liability which the legislature had prescribed in

1851. In other words, the adoption of a principle of admiralty law cannot be considered as merely local or municipal legislation."

15 Fed. Cas., 423.

In addition to these cases, in which the application of the act to foreign shipowners was contested and opinions rendered upon the precise question, there are many cases in which the foreign shipowner has been given the benefit of the act, although but a single foreign vessel was involved, or two vessels of the same foreign nationality.

The Thingvalla, 48 Fed. Rep., 764;

The Strathdon, 89 Fed. Rep., 374;

The Norge, 156 Fed. Rep., 845.

In *The Thingvalla* (*supra*) a Danish corporation was the owner of two steamships, the *Geiser* and the *Thingvalla*, which collided on the high seas, resulting in the sinking and loss of the *Geiser* and her cargo. The Circuit Court of Appeals for the Second Circuit affirmed the decree of the lower Court which held that the *Thingvalla* was free from fault and that its owner was entitled to the benefit of the limitation of liability provided by the American Limited Liability Act.

In the *Strathdon* (*supra*), Judge Thomas in the District Court for the Eastern District of New York, sustained a petition for limitation of liability filed by the British owners of the steamship *Strathdon*, whose cargo was damaged by fire while the steamship was passing through the Suez Canal.

In *The Norge* (*supra*), the District Court for the Southern District of New York sustained the petition of the Danish owner of the steamship *Norge*, to limit its liability by reason of the sinking of that steamer by collision with a derelict or some unknown rock or obstruction on the

high seas. In none of these cases should the American Limited Liability Act have been applied if the contention of the claimants here and the decision of the District Court can be sustained.

Judge Holt did not consider any of these cases as authorities opposed to his views with the exception of *The State of Virginia*, which he thought wrongly decided, and *Levinson vs. Oceanic Steamship Navigation Co.*, which he apparently thought was not an authority, because no question was raised as to the nationality of the steamer in the limitation proceedings. He thought that they were to be disregarded because no question was raised as to the right to obtain limitation under the United States statute either because the rule of liability of the country to which the vessel belonged was the same as that of this country, or because the case was decided by the Court upon other grounds and this question not raised. But is a case to be denied its weight as authority because after repeated decisions the same point is not again raised; and is not the continued acquiescence of Courts and counsel for a period of more than thirty years to be given great weight in determining whether the point now raised is well taken? Nor is it a sufficient explanation of such decisions that the law of the vessel's flag may have been the same as the law of the United States. The law which the courts were enforcing was that of the United States. Nor is there any suggestion that the foreign law was known, much less considered; and even were it known that the foreign law was the same as that of the United States, it must be remembered that in no case was it ever decided that a foreign shipowner is entitled to institute and maintain a limitation proceeding in the Courts of the United States under the law of limitation of liability of a foreign nation. Certainly, if

counsel in any of these cases had for a moment thought that the law of the United States was not applicable, they would have been prompt to raise the objection and seek to prevent a limitation of liability under any law; and if the Courts had considered the law of the United States inapplicable to the facts of the cases before them they would certainly not have proceeded to make final decrees without first considering and deciding whether the similarity of the foreign law of limited liability justified them in applying the Limited Liability Act of the United States.

We did not include the decision of this Court in *La Bourgogne*, 210 U. S., 95, in the list of cases in which the American law was applied although vessels of but a single foreign nationality were involved. It is submitted, however, that *La Bourgogne* should properly be included in the same class. Although the collision there was between a French vessel and a British vessel it had previously been decided in an action between the owners of the vessels that *La Bourgogne* was solely to blame for the collision. The *Cromartyshire* vs. *La Bourgogne*, 44 Shipp. Gazette, 31; s. c., 44 *id.*, 311.

The British vessel filed no claim and was in no way a party to the limitation proceeding. The contest was solely between the French shipowner and the passengers and owners of cargo on that ship. So far, therefore, as the decision in *La Bourgogne* is concerned, the result could have been no different whether *La Bourgogne* had been sunk as a result of the collision with the *Cromartyshire*, which, so far as the determination of that proceeding was concerned, was treated as free from fault, or as a result of a collision with an iceberg.

Nor is it possible to believe that this Court would have applied the American Limited Liability Act in the case of *La Bourgogne*, although in fact French law alone was

applicable, merely because the point was not raised by counsel. An examination of the opinion makes such an explanation even more impossible. In discussing the contention of counsel for the claimants that the French law as to speed in fog should govern, the opinion refers to the fact that the right of a foreign ship to obtain in the courts of the United States the benefit of the Limited Liability Act was settled in *The Scotland*, and concludes that the case must be decided by the international rule as interpreted in the courts of the United States and not under that prevailing in the French courts. The opinion continues:

"The petitioner is here seeking the benefits conferred by a statute of the United States, which it could not enjoy under the general maritime law. * * * As the petitioner called the various claimants into a court of admiralty of the United States to test whether, in virtue of the laws of the United States, it should be relieved in part at least of liability from the consequences of the acts of its agents, and, as the international rules have the force of a statute, we think the issues presented were of such a character as to render it essential that the right to exemption should be tested by the law as administered in the courts of the United States and not otherwise" (p. 116).

The Court then proceeds to consider the nature and character of the acts which would constitute privity and knowledge within the intendment of the Limited Liability Act. Surely this Court would not thus exhaustively have considered the meaning and effect of the Limited Liability Act of the United States had it not regarded that law alone the measure of the petitioner's liability.

FOURTH POINT

THE CIRCUMSTANCE THAT THE DISASTER OUT OF WHICH THIS PROCEEDING AROSE INVOLVED BUT A SINGLE VESSEL OF FOREIGN NATIONALITY IN NO WAY AFFECTS THE APPLICATION OF THE AMERICAN LIMITED LIABILITY ACT.

The Limited Liability Act is not a mere municipal regulation; it is the adoption of a general principle establishing the maritime law of the United States, and declaring the rule by which justice is to be administered in maritime cases whenever parties of whatever nationality resort to our courts for redress.

In view of this settled interpretation of the act, it is not apparent how the mere circumstance that but a single vessel of foreign nationality was involved in the disaster can in any way tend to defeat the application of the act. The District Judge, however, was of opinion that certain remarks of Mr. Justice Bradley in *The Scotland* (*supra*) gave support to such a contention. At pages 29-30 of the opinion Mr. Justice Bradley said:

"In administering justice between parties it is essential to know by what law, or code, or system of laws, their mutual rights are to be determined. When they arise in a particular country or State, they are generally to be determined by the laws of that State. Those laws pervade all transactions which take place where they prevail, and give them their color and legal effect. Hence, if a collision should occur in British waters, at least between British ships, and the injured party should seek relief in our courts, we would administer justice according to the British law, so far as the rights and liabilities of the parties were concerned, provided it were shown what that law was. If not shown, we would apply our own law to the case. In the French or Dutch tribunals they would do the same. But, if a collision occurs on the high seas, where the law of no particular State has exclusive force, but all are equal, any forum called upon to settle the rights of the parties would *prima facie* deter-

mine them by its own law as presumptively expressing the rules of justice; but if the contesting vessels belonged to the same foreign nation, the court would assume that they were subject to the law of their nation carried under their common flag, and would determine the controversy accordingly. If they belonged to different nations, having different laws, since it would be unjust to apply the laws of either to the exclusion of the other, the law of the forum, that is, the maritime law as received and practised therein, would properly furnish the rule of decision."

So far as these remarks relate to the case of contesting vessels belonging to the same foreign nation, they are, of course, merely *dicta*, since neither the facts nor the legal principle which would govern under such a state of facts could have any bearing upon the case presented in *The Scotland*. Under these circumstances the rule of this Court as to *dicta*, stated by Chief Justice Marshall in *Cohens vs. Virginia*, 6 Wheat., 264, 399, and repeated in *Pollock vs. Farmers' Loan & Trust Co.*, 157 U. S., 429, 574, may properly be applied. But even the *dicta* of so learned a judge as Mr. Justice Bradley are entitled to the greatest consideration.

It is to be observed that the passage quoted is found in the earlier portion of his opinion, where the learned Judge was discussing the broad question as to the law by which the mutual rights of parties are to be determined in ascertaining their primary liabilities and administering justice between them. That this is the extent of the application of the principle which he was then discussing is indicated by the use made of this passage in the opinion of this Court in *La Bourgogne*, 210 U. S., 95, 115. There the Court was discussing the claimants' contention that the law of France on the subject of speed in fog should be applied to the determination of the case. Upon that question it is obvious that Mr. Justice Bradley's observations as to the law which should be applied in adminis-

tering justice between parties are directly in point. So, in the absence of international rules it would obviously be unjust to apply the law of either nation in the case of a collision between vessels of different nationalities. But if both vessels belong to the same nationality their common law prescribing the rules of navigation to be observed by each would properly be applied in determining their liabilities. To such questions as these Mr. Justice Bradley's remarks, which we are now discussing, can properly be applied; but rightly understood they have no application whatever to the questions presented in this case.

That this is the proper effect to be given to Mr. Justice Bradley's *dictum* is further illustrated in this Court's opinion in *The Chattahoochee*, 173 U. S., 540, 550, where, in quoting from Mr. Justice Bradley's opinion in support of the application of the Harter Act to foreign vessels, this Court considered it unnecessary even to include that portion of his opinion which is relied upon by the claimants:

" 'In administering justice,' said Mr. Justice Bradley, p. 29, 'between parties, it is essential to know by what law or code, or system of laws, their mutual rights are to be determined. When they arise in a particular country or State, they are generally to be determined by the law of that State. Those laws pervade all transactions which take place where they prevail, and give them their color and legal effect. * * * But, if a collision occurs on the high seas where the law of no particular State has exclusive force, but all are equal, any forum called upon to settle the rights of the parties would *prima facie* determine them by its own law, as presumptively expressing the rules of justice; * * *.' "

But if it be assumed that Mr. Justice Bradley's remarks are to be applied more broadly than we have indicated, it becomes necessary to examine more closely the grounds of the rule thus laid down. It is evident that Mr. Justice Bradley had in mind a case where the rights of contesting

vessels were to be determined. In the passage already quoted, he says

"If the *contesting* vessels belong to the same foreign nation."

The rule laid down, therefore, is to be applied to a case of *contesting* vessels and not merely to a case where two vessels of the same foreign nationality have been in collision. His remarks proceed entirely upon the theory of *contesting* vessels and not merely a *collision* between two vessels. That he had in mind a case where the *contesting* vessels were the sole parties to the litigation is further indicated by his remarks at page 31 of the opinion, where he said:

"Each nation, however, may declare what it will accept and, by its courts, enforce as the law of the sea, when parties choose to resort to its forum for redress. And no person subject to its jurisdiction, or seeking justice in its courts, can complain of the determination of their rights by that law, unless they can propound some other law by which they ought to be judged; and this they cannot do except where both *parties* belong to the same foreign nation; in which case, it is true, they may well claim to have their controversy settled by their own law. Perhaps a like claim might be made where the *parties* belong to different nations having the same system of law. But where they [*i. e.* the *parties*] belong to the country in whose forum the litigation is instituted, or to different countries having different systems of law, the court will administer the maritime law as accepted and used by its own sovereignty." (*Italics ours.*)

It is clear, therefore, that Mr. Justice Bradley was considering the nationality of the parties before the Court and not merely the flags of the vessels involved. This is made even clearer by the language of the Court in *The Belgenland*, 114 U. S., 355, 368-9:

"Indeed, where the *parties* are not only foreigners, but belong to different nations, and the injury or salvage service takes place on the high seas, there seems to be no good reason why the *party* injured, or doing the service,

should ever be denied justice in our courts. Neither *party* has any peculiar claim to be judged by the municipal law of his own country, since the case is pre-eminently one *communis juris*, and can generally be more impartially and satisfactorily adjudicated by the court of a third nation having jurisdiction of the *res* or *parties*, than it could be by the courts of either of the nations to which the litigants belong." (Italics ours.)

And again, at page 369:

"As to the law which should be applied in cases between *parties*, or ships, of different nationalities, arising on the high seas, not within the jurisdiction of any nation, there can be no doubt that it must be the general maritime law, as understood and administered in the courts of the country in which the litigation is prosecuted." (Italics ours.)

It appears from the certificate that one of the claimants is a British subject and the other an American citizen and that the claimants are of many different nationalities, many of them citizens of the United States. It is apparent, therefore, that the *contesting* parties are of different nationalities. If, then, as Mr. Justice Bradley said—

'it would be unjust to apply the laws of either to the exclusion of the other,'

the law of the forum must be applied.

Perhaps Mr. Justice Bradley, when he referred to the possibility of applying foreign law where both parties belonged to the same foreign nation, may have had in mind the suggestion of the Court in *Cope v. Doherty*, 4 Kay and J., 367, a case which he had just been considering, that the American law could be administered as between the American shipowners and American claimants. If this suggestion were followed the American Limited Liability Act would be applied here as to every one other than British claimants. The difficulty of divid-

ing such a limitation proceeding and applying the American limitation as to some and the British limitation as to others strongly argues against such a result. If the British claimant chooses to resort to our courts for redress, particularly in a case such as this, where his own courts are equally open to him for that purpose, he should not expect other or different treatment than that accorded to our own citizens and other foreigners.

Even in the English Courts, before the British Act was amended so as expressly to include foreigners, it was recognized that the application of the Act could not be made to depend upon the mere fact that vessels of different nationalities were in collision. As Dr. Lushington said in *The Wild Ranger*, 1 Lush., 553:

"What difference can it make in the construction of the statute whether a foreign ship comes in collision with another foreign ship, as in *Cope v. Doherty* [where two American vessels were in collision on the high seas], or as here, with a British ship. There is nothing whatsoever in the statute itself that permits or even suggests such a mutable construction. The statute applies to all foreign ships on the high seas or it applies to none."

We have already referred to *La Bourgogne*, *supra*, as properly coming within the class of cases in which the American law was applied, although vessels of but a single foreign nationality were involved (*ante*, p. 32). The importance of that decision, however, warrants some further reference in connection with this point. There, as here, there were both American and foreign claimants, including claimants of the same nation to which *La Bourgogne* belonged. There, as here, there was no other *contesting* vessel. Neither the *Cromartyshire* nor any person on board of her, nor the owner of any of her cargo appeared or filed any claim in the limitation proceedings instituted here by the French owners of *La Bourgogne*. The reason for this, of course, was that the *Cromartyshire*

had already recovered her damages in an action in England, where *La Bourgogne* was held solely to blame. The element of contesting vessels was, therefore, entirely absent from the case. So far as any principle to which Mr. Justice Bradley refers is concerned, no possible distinction can be drawn between the circumstances of *La Bourgogne* and the present case.

It is only by further metaphysical extension of the principle of the law of the flag that the claimants hope to escape from the controlling effects of this Court's decision in *La Bourgogne*. Their argument is that as each vessel was a floating part of the territory of her flag, *La Bourgogne*—to quote from their brief in the Circuit Court of Appeals—

“committed a tort upon British territory, viz., upon the *Cromartyshire* and thus brought herself within the doctrine of *The Scotland* concerning the effect of collisions at sea between the ships of different countries.”

But this argument overlooks the fact that it was not for a tort committed against the *Cromartyshire* that *La Bourgogne* was held liable in the limitation proceeding. It was for a tort committed against her own passengers. Unless that tort was committed in French territory the right of action for death which this Court found had accrued under the French law could not have existed.

The doctrine that a vessel is a part of the territory of the country whose flag she bears is in reality but the expression of a metaphor and can be applied only to a very limited extent. This was well expressed by Lindley, J., in *Queen v. Keyn*, 2 Ex. D., 63, 94:

“When, indeed, a ship is out at sea in waters which are not the territorial waters of any state, it is right that those on board her should be subject to the laws of the country whose flags she bears; for otherwise they would be subject to no law at all. To this extent a ship may be said to be part of the territory of the country of her flag:

See Man. Law of Nations, pp. 117-255; but so to speak of her is to employ a metaphor, and this must never be lost sight of."

But it is an altogether unwarranted extension of the doctrine to contend that a collision on the high seas between two vessels under a common flag takes place in the territory of the country to which they belong; nor in the case at bar does the doctrine justify the conclusion that the collision with the iceberg took place in British territory. In either case the collision occurs on the high seas and not within the exclusive jurisdiction of any nation. This is illustrated by the case of *Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co.*, 10 Q. B. D., 521. A collision had occurred between two vessels on the high seas; there was some question as to whether the vessels should be considered British or Dutch. Brett, *L. J.*, said, pages 536-7:

"But I will assume that both ships were Dutch ships; nevertheless, whatever might have been the Dutch law, if this case had been tried in Holland, it seems to me the defendants are still liable. The negligence on the part of the servants of the defendants did not take place in Holland, it did not take place within the sole territorial jurisdiction of a foreign country. * * * But the negligence complained of in this action took place upon the high seas, which is the common ground of all countries. Therefore that rule with regard to the exclusive jurisdiction of a foreign country does not apply."

It was there held that the maritime law as administered in England should be applied in determining the liability, and both vessels being held at fault—although under a Dutch law there would have been no liability on the part of either—a decree for half damages under the English rule was given against one of the vessels, the carrying vessel being relieved from any liability by reason of the provisions in the bills of lading.

The British Death Act gives a right of action to those

on board the *Titanic* not because the collision with the iceberg took place in British territory, but because the British Death Act was in force on board the *Titanic*, and, therefore, gave a right of action to those on board that vessel, just as in *La Bourgogne* the French law gave a right of action for death to those on board *La Bourgogne*.

In the case of *La Bourgogne* it seems that no right of action for death would have existed against the *Cromartyshire* or her owners. This is apparently the result of the decision in *The Alaska*, 130 U. S., 201. There, as the result of a collision on the high seas between the British steamer *Alaska* and the New York pilot-boat *Columbia*, certain persons on board the *Columbia* lost their lives. It was held, upon the authority of *The Harrisburg*, 119 U. S., 199, that no action could be maintained against *The Alaska*, because of the absence of any law creating a right of action for death. The decision in *The Hamilton*, 207 U. S., 398, does not hold to the contrary, because there both *The Saginaw*, on board of which were the persons whose lives were lost, and *The Hamilton*, against which a recovery was allowed, were vessels of the State of Delaware.

In addition to the *dictum* of Mr. Justice Bradley, the District Court relied upon two decisions which, however, were not concerned with the Limited Liability Act. The first is *The Lamington*, 87 Fed. Rep., 752, in which Judge Thomas, in the District Court for the Eastern District of New York, held that a seaman who had signed articles on a British vessel in England, and was injured on the high seas, could not maintain an action *in rem* against his vessel in the Courts of the United States because British law confers no maritime lien in such a case. In other words, the Court held that the circumstances of the accident gave rise to no *jus in re* and that, therefore, the right which the libel sought to enforce in

the Courts of the United States did not exist. The decision does not seem at all in point here.

The other case is *The Eagle Point*, 142 Fed. Rep., 453. Like the preceding case no question of limitation of liability was involved. Two British vessels, *The Eagle Point* and *The Biela*, were in collision upon the high seas. Both vessels were held at fault. *The Biela* was a total loss; *The Eagle Point* reached port and was libelled by the owners of cargo shipped on board *The Biela* at Philadelphia. The shippers were allowed to recover only one-half of their losses from the surviving vessel, following the British rule of damages in cases of collision resulting from mutual fault. The Court held that the cargo owner when he placed his goods under the British flag and accepted a bill of lading therefor, subjected his rights to the law of Great Britain and impliedly agreed that in case of loss by collision resulting from mutual fault he should have a right to recover one-half only of his loss.

Apparently the Circuit Court of Appeals for the Third Circuit thought that the cargo owner had entered into an agreement fixing his rights in case of loss, so that instead of having a single cause of action for his whole loss he in effect had two causes of action, each for one-half of his whole loss, neither tort-feasor being liable with respect to the cause of action against the other.

The Eagle Point is opposed to the decision of Judge Addison Brown in *The Britannic*, 39 Fed. Rep., 395, 400, where, on precisely similar facts, with the immaterial exception that the two colliding vessels belonged to the same owner, he held that the American rule should be applied, and gave the cargo owner a decree for the full amount of his damages against the vessel colliding with the vessel which carried his cargo.

But, whether rightly decided or not, *The Eagle Point* does not decide nor intimate that if the recovery of half

damages against *The Eagle Point* had exceeded her value she would not have been entitled to a limitation of her liability under the American statute. That question, under the circumstances of that case, which was not a limitation proceeding, could not arise, and was not considered or determined.

The discussion in the Court's opinion had to do only with the determination of the basis of *The Eagle Point's* liability arising from a collision between two vessels, both of which were in fault. It did not touch the question of the limitation of that liability. The Limited Liability Act is not applied in such a case until the amount which the claimant would otherwise recover has been ascertained. Then the party whose liability has thus been determined may, if the loss occurred without his privity or knowledge, have the benefit of the statute in respect of the amount which he is decreed to pay. *The North Star*, 106 U. S., 17.

FIFTH POINT

THE LIMITED LIABILITY ACT HAS A TWO-FOLD PURPOSE: (1) TO PROVIDE FOR THE LIMITATION OF THE LIABILITY OF SHIPOWNERS, AND (2) TO PROVIDE A PROCEEDING IN WHICH ALL PARTIES MAY BE BROUGHT INTO CONCOURSE AND THE LIABILITY OF THE SHIPOWNER DETERMINED.

The District Court dismissed the petition because it thought that the petitioner was not entitled to the benefit of the limitation provided in the American Limited Liability Act. No consideration was, apparently, given to the two-fold purpose of the statute. This purpose does not appear very clearly on the face of the act itself although the act is entitled, "An Act to Limit the

Liability of Shipowners *and for other Purposes.*" As was said in *Providence & New York S. S. Co. v. Hill Man'g Co.*, 109 U. S., 578, 590:

" We have said that, by the provisions of the Act, the scheme was sketched in outline. A reference to its provisions shows that it was only an outline; and that the regulation of details as to the form and modes of proceeding was left to be prescribed by judicial authority."

The form and modes of proceeding were prescribed by this Court in the 54th to 57th Rules in Admiralty, promulgated May 6, 1872. Of these rules this Court said in *Providence & New York S. S. Co. v. Hill Man'g Co.* *supra*:

" In promulgating the rules referred to, this court expressed its deliberate judgment as to the proper mode of proceeding on the part of shipowners for the purpose of having their rights under the act declared and settled by the definitive decree of a competent court, which should be binding on all parties interested, and protect the shipowners from being harrassed by litigation in other tribunals " (p. 594).

In *Butler v. Boston S. S. Co.*, 130 U. S., 527, 552, the Court said:

" The beneficent object of the law in enabling the shipowner to bring all parties into concourse who have claims arising out of the disaster or loss, and thus to prevent a multiplicity of actions, and to adjust the liability to the value of the ship and freight, has been commented on in several cases that have come before this court, notably in the cases of *Norwich Company v. Wright*, 13 Wall., 104, and *Providence & New York Steamship Co. v. Hill Man'g Co.*, 109 U. S., 578."

In *The San Pedro*, 223 U. S., 365, 371, this Court said:

" Conceding all that can be said about the expense, delay and inconvenience which will result if the salvage claimants are to be required to present their claim in the limited liability case, yet far greater confusion must result if such objections are enough to defeat the manifest object of the fifty-fourth rule. This court, in furtherance of the

apparent purpose of Congress to limit the liability of vessel owners (Revised Statutes, Sections 4283-5), has, by that rule, prescribed how an owner may avail himself of the benefit of the statute. The very nature of the proceeding is such that it must be exclusive of any separate suit against an owner on account of the ship."

Thus the purpose of the act and of the Rules in Admiralty adopted to carry out its provisions was not merely to fix a limit upon the liability of the shipowner, but to provide for the determination of that liability in a single proceeding, the result of which would be binding upon all parties.

The difficulty and confusion which might result in the absence of such a proceeding has been adverted to by this Court in a number of cases. Thus in *Providence & New York S. S. Co. v. Hill Man'f'g Co.*, *supra*, after referring to the possibility of pleading the statute as a defense in separate actions, it was said:

"But even in that case, in the absence of a remedy by which they could obtain a decree of exemption as to all claimants, they would be liable to a diversity of suits, brought perhaps in different States, after long periods of time, when the witnesses have been dispersed, and issuing in contrary results before different tribunals" (p. 595).

Nor would the evils of such a situation be felt alone by the shipowner. Instead of a single proceeding in which the rights of all claimants can be determined with the minimum of trouble and expense, each claimant would be compelled to institute a separate suit and establish therein his right of recovery. The Act, therefore, accomplishes a "beneficent object" not only for the shipowner, but for the claimants as well.

Under the Rules in Admiralty of this Court, all that is necessary to enable the owner of any vessel to institute a limitation proceeding is that he shall have been sued for loss, damage or injury by collision and shall desire to *claim* the benefit of limitation of liability provided in the act.

It matters not that the shipowner may not be entitled ultimately to any limitation of his liability; it is only necessary that he desire to *claim* the benefit of such limitation. Having complied with the requirements of the 54th Rule, he is entitled under the 56th Rule to contest his liability independently of the limitation of liability claimed under the act.

The proceedings thus having been instituted, the first question to be determined is the liability of the shipowner. As was said in *Providence & New York S. S. Co. v. Hill Man'g Co.*, *supra*:

"The questions to be settled by the statutory proceedings being, first, whether the ship or its owners are liable at all (if that point is contested and has not been decided), and secondly, if liable, whether the owners are entitled to a limitation of liability, must necessarily be decided by the District Court having jurisdiction of the case" (p. 595).

Until, then, the question of the petitioner's liability has been determined in the proceeding thus instituted, no question can properly arise as to what limitation, if any, shall be applied in the event that liability is established. Obviously, that question may never arise in the proceedings. If the shipowner be found free from any liability, no question of limitation will ever be presented; and this is equally true if the shipowner, though found liable fails to establish his freedom from privity or knowledge. No matter what the view, therefore, of the District Court as to the limitation to which the petitioner might ultimately be entitled, the proceedings should not have been dismissed.

But even if it had been material for the District Court to consider and determine what limitation should ultimately be applied, there were no facts before it to show the existence of any other limitation than that prescribed by the American Limited Liability Act. *Prima facie*, at least, the petitioner was entitled to the benefit of the American act; and whether or not that *prima facie* right

might ultimately be defeated, the petition upon its face was not subject to attack. This was clear even in the very *dictum* of Mr. Justice Bradley upon which the District Court relied. Wherever any suggestion is made in Mr. Justice Bradley's opinion that under certain circumstances a foreign law might be applied, he is careful to hedge it about with such limitations as—

“provided it were *shown* what that law was. If not shown, we would apply our own law to the case.” (Italics ours.)

The Scotland, supra, p. 29.

And again:

“Each nation, however, may declare what it will accept and, by its courts, enforce as the law of the sea, when parties choose to resort to its forum for redress. And no persons subject to its jurisdiction, or seeking justice in its courts, can complain of the determination of their rights by that law, *unless they can propound some other law* by which they ought to be judged.” (Italics ours.)

The Scotland, supra, pp. 31-2.

If, as may be thought from the reference by the learned District Judge to MacLachlan on Shipping as authority for his statement of British law, he intended to take judicial notice of that law, he must have overlooked the case of *Liverpool Steam Co. v. Phenix Ins. Co.*, 129 U. S., 397, where this Court said, at page 445:

“The law of Great Britain since the Declaration of Independence is the law of a foreign country and, like any other foreign law, is matter of fact, which the courts of this country cannot be presumed to be acquainted with, or to have judicial knowledge of, unless it is pleaded and proved.”

It was urged upon the Court in that case that this rule should be relaxed in a court of admiralty, but of this the Court said, at page 445:

“The rule is as well established in courts of admiralty as in courts of common law or courts of equity. Chief Jus-

tice Marshall, delivering judgment in the earliest admiralty appeal in which he took part, said: 'That the laws of a foreign nation, designed only for the direction of its own affairs, are not to be noticed by the courts of other countries, unless proved as facts, and that this court, with respect to facts, is limited to the statement made in the court below, cannot be questioned.' *Talbot v. Seeman*, 1 Cranch, 1, 38. And in a recent case in admiralty, Mr. Justice Bradley said: 'If a collision should occur in British waters, at least between British ships, and the injured party should seek relief in our courts, we would administer justice according to the British law, so far as the rights and liabilities of the parties were concerned, provided it were shown what that law was. If not shown, we would apply our own law to the case. In the French or Dutch tribunals they would do the same.' *The Scotland*, 105 U. S., 24, 29."

Here, then, we have a subsequent explanation by the Supreme Court itself of what was meant by Mr. Justice Bradley in his opinion in *The Scotland* when he referred to the necessity of showing British law. He meant that that law must be pleaded and proved as any other fact, and he expressly declares that unless that is done the courts of the United States will apply American law.

LAST POINT

QUESTION A SHOULD BE ANSWERED IN THE AFFIRMATIVE;
QUESTION B, IF ANSWERED, IN THE AFFIRMATIVE; QUESTION
C, IF ANSWERED, THE LAW OF THE UNITED STATES.

January, 1914.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Oceanic Steam Navigation
Company, Limited.

CHARLES C. BURLINGHAM,
J. PARKER KIRLIN,
NORMAN B. BEECHER,
Of Counsel.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911

No. 793

**THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED,
AS OWNER OF THE STEAMSHIP TITANIC**

vs.

WILLIAM J. MELLOR AND HARRY ANDERSON

**ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT**

appendix to

**BRIEF FOR THE OCEANIC STEAM NAVIGATION
COMPANY, LIMITED**

BURLINGHAM, MONTGOMERY & BEECHER
Proctors for Oceanic Steam Navigation Company, Limited

**CHARLES C. BURLINGHAM
J. PARKER KIRKIN
NORMAN B. BEECHER**

Of Counsel

Opinions of Judge St. A.

UNITED STATES DISTRICT COURT,

49

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of the OCEANIC
STEAM NAVIGATION COMPANY,
LIMITED, Owner of the S. S.
Titanic, in a Cause of Limi-
tation of Liability.

OPINION
April 21, 1913

50

BURLINGHAM, MONTGOMERY & BEECHER (CHARLES
C. BURLINGHAM, J. PARKER KIRLIN and NORMAN
B. BEECHER, of counsel), for petitioner.

HUNT, HILL & BETTS (FREDERICK M. BROWN and
GEORGE WHITEFIELD BETTS, Jr., of counsel), for
exceptants.

HOLT, J.:

The questions involved in this case arise upon exceptions to a petition for the limitation of liability filed by the Oceanic Steam Navigation Company, Limited, as owner of the British steamship *Titanic*. The petition alleges, in substance, among other things, that the petitioner, the Oceanic Steam Navigation Company, Limited, is a British registered company, operating a line of cargo and passenger steamships between Southampton and New York; that the petitioner was the sole owner of the steamship *Titanic*, built in Belfast and launched in 1911; that on April 10, 1912, the *Titanic*, with passengers and cargo on board, left Southampton on her maiden voyage, bound for New York; that on April 14, about 11:40 P. M., in mid-ocean, in

51

latitude 41°, 46' N., and longitude 50°, 14' W., the *Titanic* came into collision with an iceberg, as a result of which she sank about 2:20 A. M. on April 15, 1912; that 711 persons were saved in the boats; that her master, many of her officers and crew, and a large number of passengers perished; that the vessel, her cargo, the personal effects of the passengers and crew, the mails, and everything connected with the vessel, except fourteen lifeboats and their equipment, became a total loss; that the value of the lifeboats saved and of the pending freight and passage moneys did not exceed the sum of \$91,805.54; and that the petitioner claimed exemption from liability. The petition prayed that an appraisal be made of the value of the petitioner's interest in the *Titanic*, and of her pending freight; that an order be made authorizing the petitioner to file a stipulation for the payment into court of the amount of said value whenever the Court should order; that the Court issue a monition requiring claimants to appear before a commissioner and prove their claims; that an injunction issue restraining the prosecution of suits against the petitioner except in the present proceeding, and that the Court adjudge that the petitioner's liability be limited to the value of the petitioner's interest in the steamship at the end of the voyage. Annexed to the petition is a list of claimants who have filed proofs of claims against the owner of the *Titanic*. Among them are Harry Anderson and William J. Mellor. These claimants have separately filed exceptions to the petition. The exceptions of Mellor are as follows:

1. That the petition does not state facts sufficient to show a cause of action for limitation of liability

under United States law, and the practice of this Court.

2. That the petition shows on its face that the acts by reason of which and for which it claims limitation of liability took place on board a British registered vessel on the high seas, and not within the territorial waters of any state or country, and therefore the law of Great Britain with reference to limitation of liability, if any, would apply, and not that of the United States.

The exceptions filed by Anderson, although somewhat more detailed, are substantially to the same effect.

56

The question whether the owner of a foreign ship could claim exemption from liability under the Limited Liability Act of March 3, 1851, which was substantially re-enacted in Sections 4282 to 4289 of the United States Revised Statutes, is one which was considered early in the cases arising under the act. When that act was passed there was a substantially similar statute in force in Great Britain. The English Courts had uniformly held that in the case of collisions between British and foreign vessels or between two foreign vessels, neither party could take the benefit of the British Act, but each was liable without limit for negligence causing disaster at sea (*The Wild Ranger*, F. P. C. Lush, Adm., 553; *Cope v. Doherty*, 2 De Gex. & J., 614; *The Carl Johan*, 3 Hag., Adm., 186; *The Amelia*, 1 Moore P. C., N. S., 471; *The Zollverein*, Swabey, 96; *The Saxonia*, Lush., Adm., 410). These cases were all based on the general doctrine that the laws of Great Britain have no extraterritorial effect. By the Merchants' Shipping Act of 1894, the previous statutes were re-

57

pealed, and now by that act the owners of a ship, British or foreign, are liable for damages in respect to loss of life or personal injury to an aggregate amount not exceeding £15 for each ton of the ship's tonnage, and in respect to loss or damage to vessels, goods, merchandise or other things, to an aggregate amount not exceeding £8 for each ton of the ship's tonnage (MacLachlan's Law of Merchant Shipping, 5th Ed., p. 129).

59

The first of these cases under the American statute to which my attention has been called was the case of *Dyer v. National Steam Navigation Co.* (3 Ben., 173; 8 Fed. Cas., p. 204), which on appeal is generally cited as the case of *The Scotland*. The facts in that case were that the British steamer *Scotland* came into collision with the American ship *Kate Dyer* on September 8, 1866, about 180 miles off Sandy Hook. The *Kate Dyer* sank immediately. The *Scotland*, badly damaged, attempted to reach New York, but sank about two miles from Sandy Hook, at a spot where the *Scotland* Lightship has since been stationed. The suit was brought *in personam* by the owners of the *Dyer* against the owner of the *Scotland*. In that suit, among other defenses, the defendant pleaded that "there is no liability *in personam* against these respondents for said loss of the *Kate Dyer*" (8 Fed. Cas., p. 208). There is no reference to this defense in the opinion of Judge BENE-
 60
 DICT, before whom the case was tried. He decided that the *Scotland* was in fault for the collision, and rendered a judgment in favor of the libelants for the value of the *Kate Dyer*. The case was appealed to the United States Circuit Court, and heard before Judge BLATCHFORD. In his decision he con-

siders the defense pleaded of exemption from liability, and refers to the fact that the answer does not state whether the alleged non-existence of liability is claimed under the Act of March 3, 1851, or under the general maritime law. Considering the question on the theory that the Act of 1851 applied, Judge BLATCHFORD says that no proceedings were instituted by the defendant to obtain an exemption from liability, and that no transfer of interest in the vessel and freight to a trustee had been made; that certain anchors, chains, rigging, etc., had been saved from the steamer, which were of the value of several thousand dollars, and that that property or its proceeds should have been surrendered or transferred, if the Act of 1851 was to be availed of. He therefore held that there having been no such surrender, and no proceedings taken by the defendants to obtain exemption from liability, the defense could not be maintained. He adds at the close of that portion of his opinion which deals with this question:

"I have not found it necessary to determine the question whether the Act of 1851 applies to the owners of a foreign vessel who seek the benefit of that act."

He then considered the question whether, under the general maritime law, the defendant is exempt from liability, and held that, as he had not surrendered what was left of the vessel, such exemption could not be claimed under that law. An appeal was taken to the United States Supreme Court, but the case in that court was not decided until 1881. Meanwhile several other cases arose, and were decided in District Courts.

In *Thomassen v. Whitewell* (9 Ben., 403), the facts were that the Norwegian bark *Daphne* came into collision with the British steamship *Great Western*, about 180 miles from Sandy Hook. The master of the bark sued the owner of the steamer. Judge BENEDICT held that as the *Great Western* was a British steamer, owned by a subject of Great Britain, and the collision was on the high seas, the owner of the steamer could not claim exemption under the American statute on the ground that it had no extraterritorial force. He was of the opinion, however, that it could claim exemption under the general maritime law, but that the wreck having been sold at public auction and delivered to other parties, the defendant must by the general maritime law be held to have intentionally waived his right to claim exemption. He therefore, having held the steamship in fault for the collision, gave judgment for the libellant for the amount of the damage. The same view substantially was expressed by Judge BENEDICT in the case of *Churchill v. The Ship British America* (9 Ben., 516), while in the case of *The John Bramall* (10 Ben., 495), decided in June, 1879, a case in which a British ship stranded on the coast of the United States, he held that the owner could take advantage of the American statute because the loss occurred within the territorial limits of the United States.

In *Levison v. Oceanic Steam Navigation Co.* (15 Fed. Cas., 422), decided in January, 1876, the facts, which are fully stated in *Margkwald v. O. S. N. Co.* (11 Hun, 462), were that the British steamer *Atlantic* was wrecked off the coast of Nova Scotia. Limitation proceedings were brought by the owner in the United States District Court for

the Southern District of New York, and resulted in a final decree limiting the liability of the owner, no question having been raised as to the nationality of the steamer. Subsequently a suit was brought by Levison, a passenger, against the company in the Circuit Court for the Southern District of New York, and the defendant pleaded in bar the final decree in the limitation proceedings. Judge SHIPMAN held that the decree was a bar, and that the United States statute limiting the liability of shipowners was not in terms confined to American vessels, but was the adoption of a general maritime principle applicable to the owners of foreign as well as American vessels.

68

In this condition of the authorities, the appeal in the case of *Dyer v. National Steam Navigation Co.*, reported under the title of *The Scotland* (105 U. S., 24), was decided in the Supreme Court during the term of October, 1881. In that case the decision of the Circuit Court was substantially reversed. The Court held that the rule of the general maritime law of Europe was not received as law in England or in this country until made so by statute, and that, while the rule adopted by the statute was substantially the same as the rule of the general maritime law, its efficacy as a rule in this country depends wholly upon the statute, and not upon any inherent force of the maritime law. In respect to the objection that the defendant did not give up or convey to a trustee the strippings of the wreck and the pending freight, the opinion states that the law contains two distinct and independent provisions on the subject, one that the shipowners shall be liable only to the value of the ship and freight, and the other that they may be

69

discharged altogether by surrendering the ship and freight; that if they fail to avail themselves of the latter proceeding, they are still entitled to the benefit of the former kind of relief; that, therefore, the defense pleaded below of exemption from liability applied if the act applied to foreign ships. Upon that question Judge BRADLEY, in the opinion, says:

- “In administering justice between parties it is essential to know by what law, or code, or system of laws, their mutual rights are to be determined.
- 71 When they arise in a particular country or State, they are generally to be determined by the laws of that State. Those laws pervade all transactions which take place where they prevail, and give them their color and legal effect. Hence, if a collision should occur in British waters, at least between British ships, and the injured party should seek relief in our courts, we would administer justice according to the British law, so far as the rights and liabilities of the parties were concerned, provided it were shown what that law was. If not shown, we would apply our own law to the case. In the French or Dutch tribunals they would do the same.
- 72 But, if a collision occurs on the high seas, where the law of no particular State has exclusive force, but all are equal, any forum called upon to settle the rights of the parties would, *prima facie*, determine them by its own law, as presumptively expressing the rules of justice; but if the contesting vessels belonged to the same foreign nation, the Court would assume that they were subject to the law of their nation, carried under their common flag, and would determine the controversy accordingly. If they belonged to different nations, having different laws, since it would be unjust to apply

the laws of either to the exclusion of the other, the law of the forum, that is, the maritime law as received and practised therein, would properly furnish the rule of decision" (pp. 29-30).

The Supreme Court accordingly held that, as that was a case of a collision between a British steamship and an American ship, the American statute furnished a defense to the owner of the *Scotland* to the extent of limiting its liability to the value of the remnants of the ship and the pending freight. A reference was ordered to determine such value. Upon that reference the libellant claimed that in addition to the value of the remnants of the ship and the pending freight they were entitled to the amount of the insurance collected by the owner of the *Scotland*. Upon that question the case came again before the Supreme Court (118 U. S., 507), and the Court affirmed the decision of the Circuit Court below to the effect that insurance money should not be included in computing the value of the vessel.

In *The Belgenland* (114 U. S., 355), decided in 1885, a case in which the Norwegian bark *Luna* and the Belgian steamship *Belgenland* came into collision, the answer contained an exception to the jurisdiction on the ground that the collision took place between foreign vessels on the high seas. Judge BRADLEY, in the opinion, in substance restated the doctrine of *The Scotland*, stating that the general rule required the application to such cases of the general maritime law as embodied in the American statute, but with certain qualifications, one of which was

"That if the maritime law, as administered by

Opinion.

76

both nations to which the respective ships belong, be the same in both in respect to any matter of liability or obligation, such law, if shown to the Court, should be followed in that matter in respect to which they so agree, though it differ from the maritime law as understood in the country of the forum; for, as respects the parties concerned, it is the maritime law which they mutually acknowledge. *The Scotland*, 105 U. S., 24, 31" (p. 370).

77

In 1885, the appeal of the case of *Thomassen v. Whitwell*, reported in the Supreme Court under the title of *The Great Western* (108 U. S., 520), was decided. In that case, the judgment of the Circuit Court, which had reversed the decision of Judge BENEDICT in the District Court, on the authority of the decision of the Supreme Court in the case of *The Scotland*, was affirmed.

78

In the case of *La Bourgogne* (210 U. S., 95), arising out of a collision between the French steamer *La Bourgogne* and the British ship *Cromartyshire*, about sixty miles off Sable Island, limitation was allowed, but Judge WHITE, in the opinion, cites with approval from the opinion of Judge BRADLEY in the case of *The Scotland*, including his statement that

"If the contesting vessels belonged to the same foreign nation, the Court would assume that they were subject to the law of their nation carried under their common flag, and would determine the controversy accordingly."

Various cases since the decision in the case of *The Scotland* have occurred in which the owners of foreign vessels injured by collision upon the high seas have obtained the benefit of the American statute limiting the liability of shipowners. These

cases are *In re Leonard*, 14 Fed., 53; *The Thingvalla*, 42 Fed., 331; 48 Fed., 764; *The State of Virginia*, 60 Fed., 1018; *The Strathdon*, 89 Fed., 374; *The Norge*, 156 Fed., 855. Of these cases, *In re Leonard* was the case of a collision between the American schooner *Job E. Leonard* and the British steamship *Aragon* on the high seas, about fifteen miles south of Long Island. Judge BROWN held that that case was governed by the then recently decided case of *The Scotland*, and allowed a limitation of liability under the American statute. The case of *The Thingvalla* arose from a collision on the high seas not far from Sable Island between two Danish steamships. The proceeding was in the form of a petition by the owners of the *Thingvalla* for limitation of liability. The Court held that the *Thingvalla* was free from fault in the collision, and that the petitioners were therefore not subject to any liability. No question appears to have been raised in the case either in the District Court (42 Fed., 331), or on appeal in the Circuit Court (48 Fed., 764), whether the law fixing the liability should be the law of Denmark or of this country. The Danish law of limited liability is apparently the same in substance as our own (*Danschewski v. Larsson*, 3 *Revue Int. due Droit Marit.*, 348; *Thomassen v. Whitwell*, 9 *Ben.*, 403), and that may have been the reason why the point was not raised.

In the case of *The State of Virginia* (60 Fed., 1018) the British steamship *State of Virginia*, owned by a British corporation, stranded on Sable Island on a voyage from New York to Glasgow, and was wrecked. There obviously can be no distinction in principle between the case of damage arising from a collision between two ships of the

80

81

same country, and from a ship being wrecked on the coast of the country to which she belongs. The owners filed a petition for limitation of liability, and Judge BENEDICT held that they were entitled to such exemption. The opinion was very short. He cited no authorities, and, after stating the facts, closed his opinion as follows:

"My opinion is that the extent of the liability of the shipowner in a case like this is determined by the statutes of the United States, and not by the statutes of Great Britain."

In view of the reversal, in the cases of *The Scotland* and *The Great Western*, of the earlier decisions of Judge BENEDICT, it seems to me a fair inference that in deciding the case of *The State of Virginia*, Judge BENEDICT probably either overlooked the qualification of the general rule stated in the case of *The Scotland*, or was led by those decisions either to change his own opinion, or to conclude that the law would ultimately be determined in favor of the right of any foreign shipowner to limit his liability under the American statute in all cases.

In *The Strathdon* (89 Fed., 374), the owners of the British steamer *Strathdon* petitioned for a limitation of their liability for claims growing out of injuries to the cargo from a fire which occurred in the Suez Canal on a voyage from Java to New York. The substantial questions argued were whether the fire was caused by the design or neglect of the shipowners within the meaning of Sec. 4282 of the United States Revised Statutes, exempting shipowners from liability for loss or damage to merchandise by a fire unless it be caused by their design or neglect. No point seems to have been

taken in that case on the question whether the owner of the vessel was entitled to an exemption from liability by reason of the fact that the ship was a British vessel.

In the case of *The Norge* (156 Fed., 855), a Danish steamship was lost on the high seas through striking a derelict or unknown obstruction under the water. The owner filed a petition for limitation of liability, but contested all claims filed against the steamer, and was held not to be responsible for such claims. Judge ADAMS held that it was not necessary to consider the question whether there were special exemptions from liability under the law of Denmark, as the law of the *Norge's* flag, on the ground that there was no liability.

86

In addition to these cases in which a direct proceeding for the limitation of liability has been had, there are other cases which have occurred since the decision of the case of *The Scotland*, but which are instructive as bearing on the general rule that the laws of no country have any extraterritorial effect. In *The Lamington* (87 Fed., 752), a Norwegian seaman who had shipped on the British ship *Lamington*, was injured while attempting to furl a sail by the breaking of a rope which caused him to fall to the deck. The Court held that the general rule applied that the liability for a tort was determined by the law of the place where the tort was committed, that a British steamer constituted a part of Great Britain, that the liability for negligence resulting in injury to the libelant was a tort governed by the law of Great Britain, and that the law of Great Britain did not create a maritime lien on a vessel or confer a right of action *in rem* for a tort negligently committed upon

87

a seaman. The Court, therefore, dismissed the libel on the ground that the claim must be determined by the laws of the country to which the vessel belonged, although by the law of this country such a claim is held to give a maritime lien enforceable against the ship.

- 89 In *The Eagle Point* (142 Fed., 453), two British steamers, the *Eagle Point* and the *Biela*, came into collision on the high seas. Each was at fault. The *Biela* and her cargo were totally lost. The *Biela's* cargo owners sued the *Eagle Point* in Philadelphia. Under the British law, in the case of a collision in which both vessels are at fault, the cargo owner injured can recover fifty per cent. of the damage from each party. Under the rule in the United States, the party damaged can recover the full amount of the damage from either vessel, upon the theory that they are joint tortfeasors. In that case, the District Court awarded a full recovery under the American law against the *Eagle Point* for the amount of the damage to the cargo owners, but on appeal to the Circuit Court of Appeals this judgment was reversed on the ground that the
- 90 British law under which a person suffering damage from a collision caused by the fault of two vessels was entitled to recover from each vessel only a half of his loss applied.

From this review of the case, I think that it certainly cannot be claimed that the right of the owner of the *Titanic* to limit its liability under the United States law is free from doubt. The case of *The State of Virginia* (60 Fed., 1018), is indeed a direct decision in favor of the petitioner. All the other cases, since the decision in the case of *The Scotland*, in which the owners of a foreign vessel

injured on the high seas have been permitted to obtain a limitation of liability, are either cases in which the collision was between vessels of different countries, when limitation was authorized by the case of *The Scotland*, or are cases in which no question was raised as to the right to obtain limitation under the United States statute, either because the rule of liability of the country to which the vessel belonged was the same as that of this country, or because the case was decided by the Court upon other grounds, and the question not raised in the case. The decision in the case of *The State of Virginia* is, in my opinion, not only in conflict with the rule stated in *The Scotland*, but is entitled to less weight on the merits than the decisions in the cases of *The Lamington* and of *The Eagle Point*. But if these decisions of Courts of first instances are to be regarded as simply conflicting, the fact remains that the rule laid down in *The Scotland*, and restated by Judge BLATCHFORD in the decision in the Circuit Court in *The Great Western*, and by Judge BRADLEY in *The Belgenland*, to the effect that when a collision occurs between two vessels of the same nation the question of their liability will be determined by the law of the country to which they belong, has never been retracted or modified by the Supreme Court, and still stands as the rule of that court. In this case the collision was between the *Titanic* and an iceberg, but I can see no reason for a different application of the rule in a case where a vessel is injured by collision with some floating object belonging to no country, or where a vessel founders on the high seas without any appreciable cause, than in the case of injuries occasioned by the collision of two vessels of the

92

93

same nation. The *Titanic* was a British ship. Her sole owner was a British company. She was sailing on her maiden voyage. She never had been within the territorial limits of the United States, and the question what law governs the liability of her owner seems to me, under the circumstances of the case, to be precisely the same question as would exist if she had sunk from collision with another British steamer.

95

The petitioner claims that the rule of liability in this case is governed by the *lex fori*, because the statute limiting the liability of shipowners pertains to the remedy and is analogous to ordinary statutes of limitations. It is well settled that the law of the forum governs all questions pertaining to the remedy, such as questions of procedure and practice, under which are included questions arising under the statutes of limitation, but I can see no analogy between an ordinary statute of limitation and this statute limiting the liability of shipowners. Ordinary statutes of limitations provide that after a certain number of years or a certain period of time a party cannot sue. It does not

96

affect the validity of the claim. A person having a claim secured by collateral can enforce the lien for the collateral after a direct suit upon the claim has been barred by the statute of limitations. But the statute limiting the liabilities of shipowners is a statute which affects a right. It limits the liability of a shipowner to the value of the ship and pending freight. It is not a limitation which arises after a certain lapse of time, but it exists from the outset. It seems to me like the statute fixing the amount of liability for injuries causing death. At common law no civil damages could be recovered

for negligence causing death. Originally in this State \$5,000 was authorized to be recovered, and no more. That was subsequently modified by a constitutional provision so as to authorize a recovery for any amount a jury might see fit to give. Can such a statute or constitutional provision be construed to relate to a remedy? It seems to me that it confers an absolute legal right, and imposes an absolute legal liability.

Counsel for the petitioner argues that the decisions holding that the Harter Act applies to foreign vessels carrying goods to or from a port of the United States (*The Silvia*, 171 U. S., 462; *The Chattahoochee*, 173 U. S., 540), are authorities which by analogy are applicable to the construction of the statutes limiting the liability of ship-owners. This argument seems at first view plausible, but I think, upon consideration, that it is fallacious. In the first place, the third section of the Harter Act applies only to vessels transporting merchandise or property to or from any port in the United States. It obviously would not apply to a suit based upon any shipment of goods on a voyage which was not to or from any port in the United States. Before the act was passed it had been established by the English authorities that a common carrier could exempt itself from liability for negligence by contract, with the result that the bills of lading given usually contained such exemptions. The Courts of this country had held that a common carrier could not exempt itself from liability for negligence and that any contract to that effect was void. The avowed object of the Harter Act, as shown in the debates in Congress upon its passage, which are fully referred to in the

98

99

Opinion.

100

101

102

thorough brief of Mr. Betts, was to make the law governing the liability of American shipowners substantially or to a considerable extent similar to that existing in favor of British shipowners. There certainly can be no presumption that the object of Congress in passing the Harter Act or the act limiting the liability of shipowners was to favor British shipowners. The avowed object of the legislation in both cases was to favor American shipowners and to develop the American mercantile marine. Moreover, in my opinion, the proper construction of the language used in the third section of the Harter Act is that it imposed a restriction upon the power of the Courts in such cases. It provided that, if the owner of any vessel transporting merchandise or property to or from any port in the United States shall exercise due diligence to make the vessel seaworthy, neither the vessel, her owner, agent or charterer, shall become or be held responsible for damages resulting from errors in navigation. The governmental instrumentality which holds persons responsible is the Court. I think that the expression in the third section of the act, "vessel owners shall not be held responsible," imposes a prohibition upon the Courts in any case which comes before them, from holding vessel owners responsible to a greater extent than is provided in the statute. On the other hand, there is no specific language in the statute limiting the liability of shipowners making it applicable to foreign ships. The language is simply "any owner of any vessel." This language ordinarily employed might be held to mean any owner of any vessel of any nation, but by the general rule of international law the laws of no

country have any extraterritorial effect. There is a legal presumption that mere general expressions in statutes which might include all mankind are restricted to the subjects of the government which enacts the law. I have no doubt that the United States might provide that the liability of the owner of any ship belonging to any country in the world should be limited, in any suits brought in this country, to the extent provided in the American statute, and that the owners of any such ships could take proceedings in the courts of this country to limit their liability, which proceedings would be binding upon the citizens and courts of this country. But the question in this case is whether the language used in the statute limiting the liabilities of shipowners is sufficient to accomplish that result.

104

In the case of *The American Banana Co. v. United Fruit Co.* (213 U. S., 347), suit was brought under the Sherman Act to recover threefold damages under that act. The facts alleged in the complaint were, in substance, that the defendant had deprived the plaintiff of the use of a plantation and railway, and had monopolized trade by certain proceedings in Costa Rica. The Court held that a statute will, as a general rule, be construed as intended to be confined in its operation and effect to the territorial limits within the jurisdiction of the lawmaker, and words of universal scope will be construed as meaning only those subject to the legislation, and that the prohibitions of the Sherman Act do not extend to acts done in foreign countries, even though done by citizens of the United States and injuriously affecting other citizens of the United States. Judge HOLMES, in the opinion, after stating the facts, says:

105

Opinion.

106

"It is obvious that, however stated, the plaintiff's case depends on several rather startling propositions. In the first place the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States and within that of other states. It is surprising to hear it argued that they were governed by the act of Congress. * * *

107

The foregoing considerations would lead in case of doubt to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is *prima facie* territorial.' *Ex parte Blain, In re Sawers*, 12 Ch. Div., 522, 528; *State v. Carter*, 27 N. J. (3 Dutcher), 499; *People v. Merrill*, 2 Parker Crim. Rep., 590, 596. Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch. In the case of the present statute the improbability of the United States attempting to make acts done in Panama or Cost Rica criminal is obvious, yet the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned."

108

Counsel for the petitioner urges that the question raised by these exceptions should more properly be left to be determined after evidence is taken upon the final hearing. That course is frequently preferable where there is any doubt about the controlling facts in respect to which evidence should

be taken. But the essential facts necessary to raise the question involved in these exceptions appear upon the face of the petition, and are entirely uncontradicted. The *Titanic* was a British ship, owned by a British company, which foundered in mid-ocean from collision with an iceberg. Those facts are all that are necessary to raise the fundamental question whether her owners can obtain exemption from liability by virtue of an American law. The point can be decided upon these exceptions, and can be taken up on appeal and decided upon a brief record, whereas probably a number of months, and possibly years, would be occupied in taking the evidence in this case, causing great labor, expense and delay. I think the question should be decided at the outset.

110

It is settled under the decisions that any exemption from liability in this country must depend upon the provisions of the American statutes, and not upon any general provisions of maritime law. Indeed, the rule exempting shipowners from liability on surrender of the ship and freight does not seem to have ever been universally adopted throughout Europe. It is stated as a rule of maritime law in the *Consolato del Mare*, the code which is the leading authority on the ancient admiralty law of the countries bordering on the Mediterranean. But there is no reference to such a rule in the laws of Oleron, or of Wisbey, or of the Hanse towns, which were the maritime codes followed in the northern parts of Europe. No such rule was ever recognized in the English courts, either of admiralty or common law, until the Act of 1813 (57 Geo. III, ch. 159), which adopted the rule by statute; and it is now well settled that no such

111

rule was ever in force in this country until the Act of 1851. The Scotland (105 U. S., 28); The Great Western (118 U. S., 534); The Main (152 U. S., 126); The Bourgogne (210 U. S., 116). The simple question, therefore, is as to the effect of the statute.

Laying out of view the authorities in the case, it seems to me that three great fundamental principals of law relied on are decisive. The rule that the law of no nation has any extraterritorial effect is universal. The rule that a ship on the high seas is a part of the country to which she belongs is universal. The rule that liability for a tort is governed by the *lex loci delicti* is universal. If the owners of the *Titanic* under these circumstances can obtain a limitation of their liability in this court they could have obtained it if she had foundered in the harbor of Southampton immediately after she started on her voyage, and while still undoubtedly within the territorial jurisdiction of England. If they are entitled to limitation of liability in this country they are entitled to limit their liability in all countries, according to the law of each country in which the proceeding is brought.

There were undoubtedly upon the *Titanic* citizens of many countries and property belonging to citizens of many countries. Is the liability of the owners of the *Titanic* to be determined by the laws of each country in which suits happen to be brought, no matter how much those laws differ? Is one claim to be determined by the law of France, if the suit is brought in France, and others by the law of Germany, or Italy, or Brazil, or Japan, merely because the suits are brought there? It seems to me that such results could not have been

Opinion.

115

within the intention of Congress of passing the statute, and that the rule laid down by the Supreme Court in the case of *The Scotland*, that when a collision occurs on the high seas between two vessels of the same country, the liability of their owners is to be determined by the law of the country to which the vessel belongs, applies in this case.

The exceptions are sustained, and the petition dismissed.

April 21, 1913.

116

117

118 UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of

The Petition of the OCEANIC
STEAM NAVIGATION COMPANY,
LIMITED, Owner of the *S. S.*
Titanic, in a Cause of Limi-
tation of Liability.

SUPPLEMENT-
ARY OPINION
May 19, 1913.

119 Burlingham, Montgomery & Beecher (Charles C.
Burlingham, J. Parker Kirlin and Norman B.
Beecher, of counsel), for Petitioner.

Hunt, Hill & Betts (Frederick M. Brown, George
Whitefield Betts, Jr., Francis H. Kinnicutt
and A. Leonard Brougham, of counsel), for
Exceptants.

HOLT, J.:

120 The direction, at the end of the opinion filed, that
the petition be dismissed, of course, can only apply
to the exceptants Mellor and Anderson. Those
parties who do not wish the petition dismissed are
entitled to be heard and to assert their claims by
any proceedings under the petition which they may
be advised to take. I think, on consideration, that
the order should provide that the petitioner have
leave to amend the petition within twenty days;
that if no such amendment be made, the petition be
dismissed as to the exceptants Mellor and Ander-
son only; that if an appeal be taken within twenty
days, the injunctions shall continue until the final
determination of the appeal; and that if no such ap-
peal be taken, the injunction shall be vacated as to
the exceptants Mellor and Anderson only. An
order to the above effect may be presented.

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JAN 19 1913
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 798.

IN THE MATTER OF THE PETITION OF THE OCEANIC STEAM
NAVIGATION COMPANY, LIMITED, FOR LIMITATION OF ITS
LIABILITY AS OWNER OF THE STEAMSHIP "TITANIC."

THE OCEANIC STEAM NAVIGATION COMPANY,
LIMITED,

Petitioner-Appellant,

vs.

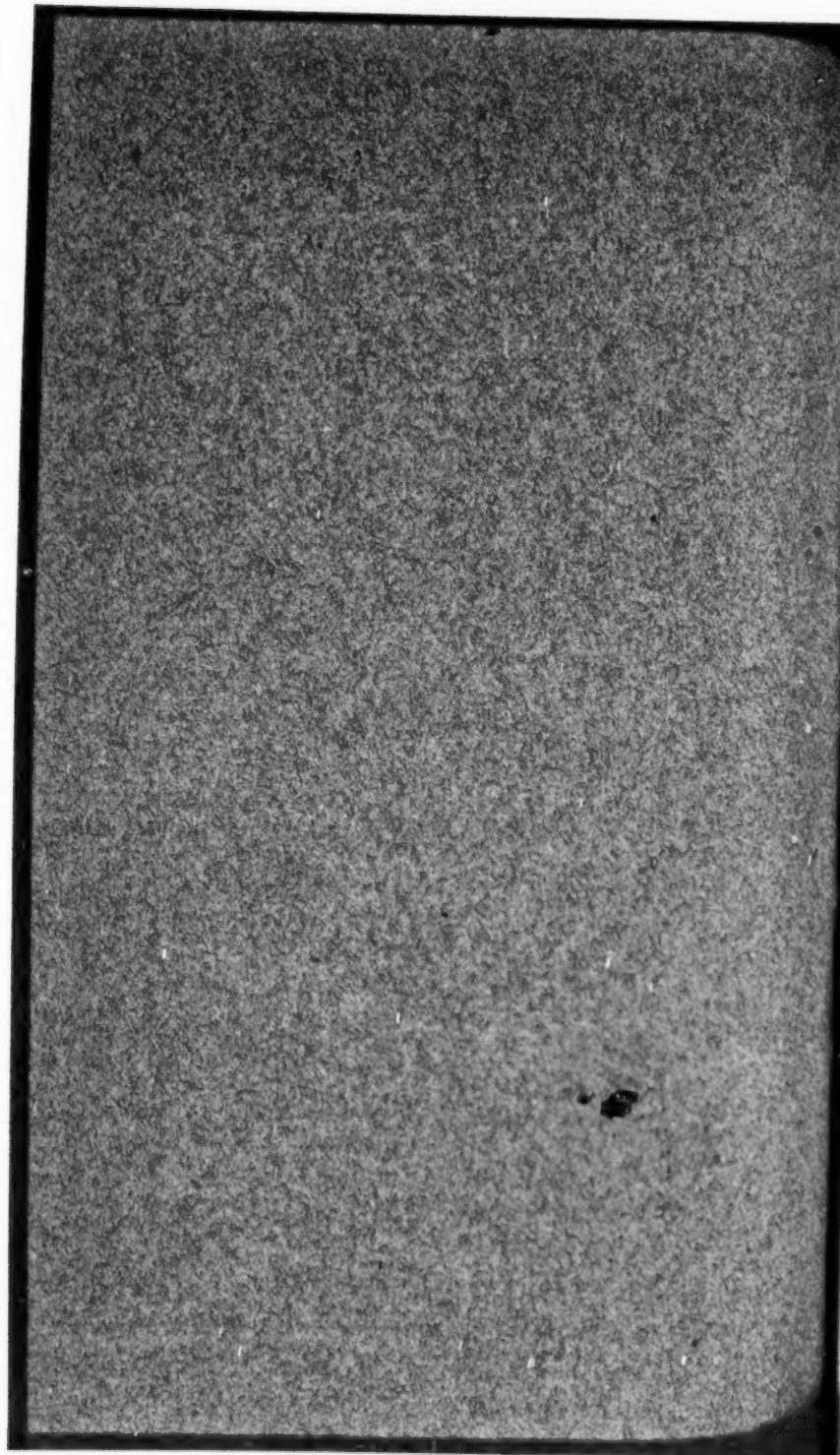
WILLIAM J. MELLOR AND HARRY ANDERSON,
Claimants-Appellees.

THE TITANIC.

INDEX TO APPELLEES' BRIEF AND LIST OF
AUTHORITIES.

FREDERICK M. BROWN,
GEORGE WHITEFIELD BETTS, JR.,
Advocates for Appellees.

HUNT, HILL & BETTS,
Proctors for Petitioner.



SUPREME COURT OF THE UNITED STATES.

No. 798, OCTOBER TERM, 1913.

THE OCEANIC STEAM NAVIGATION COMPANY,
LIMITED, OWNER OF THE "TITANIC,"

Petitioner-Appellant,

vs.

WILLIAM J. MELLOR AND HARRY ANDERSON,
Claimants-Appellees.

SUBJECT INDEX TO APPELLEE'S BRIEF.

	Page
Grounds of Judge Holt's decision herein:	
<i>The Scotland</i> , 105 U. S., 24; <i>The Eagle Point</i> , 142 Fed., 453 (certiorari denied, 201 U. S., 644; 189 U. S., 510).....	3
The certified questions.....	5
Legal propositions involved in answers thereto.....	7
Doubt raised in minds of admiralty practitioners by the un- explained decision in the State of Virginia.....	10
First. The British law of limited liability is applicable to the Titanic disaster	11
I. Upon fundamental principle, the law of the flag governs as the <i>lex loci delicti</i>	11
The American jurisdiction has, in general, been forced upon Titanic sufferers, as shown by the relatively small number suing here before injunction; limitation fund under act of 1851 is only 3 per cent of British limitation fund.....	12
A. <i>Lex loci delicti</i> , as applied to torts ashore or in terri- torial waters	13
Showing favors according to citizenship is un- American	15
B. Law of the flag, as applied to things done by, or hap- pening on, ships at sea.....	17
Collisions under a common flag.....	23

	Page
C. The law governing rights and liabilities growing out of collisions at sea, especially between ships of different nations	25
1. The French view: <i>The Apollo</i>	25
<i>The Stokesley</i>	32
2. The German view: <i>The Kong Inge</i>	32
<i>The Svea</i>	39
3. The English view	39
4. The American view.....	41
D. The Scotland decision analyzed and found to hold that the act of 1851 never applies ex proprio vigore to disasters at sea involving one or more foreign vessels; but that the principle, recognized by it, is applicable as a rule of justice, where it is unfair to apply any single foreign law of the flag.....	43
E. Diversity of citizenship of parties litigant is legally insignificant	48
Instances in the decisions.....	49
Ships personified in the admiralty.....	49
The Scotland construed by later cases.....	50
Doctrine of <i>U. S. vs. Holmes</i> , 5 Wheaton, 412, 417.	52
F. A single-ship disaster is analogous with a collision under a common flag.....	52
Mr. Justice Story granted limited liability under law of flag, respecting a single-ship disaster, where lex fori recognized no such right.....	53
II. The act of 1851 (inapplicable here as a rule of justice, because there is a foreign law of the Titanic's flag applicable under fundamental principles) does not govern foreign ships at sea, ex proprio vigore.....	54
A. No Congressional will having been expressed that the act of 1851 should extend to foreign ships at sea, the general and unrestricted language of the act will, under fundamental principles of construction, be deemed not to apply extraterritorially.....	54
Cases	54
British courts always refused to apply British act extraterritorially to foreign vessels; but never refused to apply foreign limitation acts to single-ship or common-flag disasters.....	55

INDEX.

iii

Page

B. Harter act different because there Congressional will to include foreign ships at sea was sufficiently expressed.	56
1. Language of the two acts.....	57
<i>U. S. vs. Palmer</i> , 3 Wheaton, 610.....	59
<i>Amer. Banana Co. vs. U. Fruit Co.</i> , 213 U. S., 347	63
2. National policies of the two acts as construed by this court.....	65
3. Purposes of the two acts as shown by their titles and by the proceedings and debates in Congress	67
The Limitation Act and amendments.....	67
The Harter Act	73
4. Materiality of Congressional proceedings as shown by the decisions of this court.....	78

Second. Upon the actual record, the law of Great Britain must be taken as holding ship-owners to unlimited liability	80
Practical advantage of permitting important legal question to be tested by exceptions.....	81

A. No presumption of identity of foreign law available to aid petitioning tort-feasor.....	85
1. Presumption fails in case of statutes of common-law countries and in case of all laws (statutory and non-statutory) of other countries	85
Exception in case of rudimentary principles of justice and of rules adopted by substantially universal agreement between principal commercial countries	87, 89
No principle properly deducible from cases where <i>lex fori</i> applied on consent of parties: The <i>Scotland, The Thingvalla</i>	90
2. Titanic claimants are entitled to an affirmative presumption (which would override a contrary presumption, if the latter existed) that ship-owners are liable without limit under British law; this country having been part of the British Empire until 4 July, 1776.....	89
Status of British law, 3 July, 1776, as judicially noticed here.....	90, 92
Presumption that it has remained unaltered.....	91



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3

	Page
B. Mere freedom from fault cannot justify a limitation proceeding or a proceeding for exoneration analogous therewith	92
Third. Limitation proceedings are not maintainable, as against exceptants, unless the substance of the foreign law is explicitly pleaded; judicial knowledge of <i>some</i> foreign limitation law, differing from ours, is not enough....	94
Fourth. Authorities giving the history of the development of the law of Great Britain, relative to the limitation of shipowners' liability.....	103
Fifth. List of authorities which correct appellant's errors.....	105

INDEX OF CASES CITED ON APPELLEES' BRIEF.

Abbott's Law of Merchant Ships and Seamen, 14th ed., p. 1045.	92
Arayo <i>vs.</i> Currel, 1 La. (O. S.), 528, 541.....	91
Ayre & Lord Co. <i>vs.</i> Kent, 202 U. S., 409.....	79
American Net & Twine Co. <i>vs.</i> Worthington, 141 U. S., 468, 474.	80
Adeline, The, 9 Cranch, 244, 288.....	56
American Banana Co. <i>vs.</i> U. Fruit Co., 213 U. S., 347, 356, 357	54, 63, 88
Amalia, The, 1 Moore, P. C., N. S., 471, 475, 482.....	23, 40, 56, 94
Abbott, Merchant Ships (14th ed.), p. 1052.....	46
Alene, The, 1 W. Rob., 111, 117.....	41, 87
Ah Sing, <i>In re</i> , 13 Fed., 286, 289.....	20
Apollo, The (1903 Clunet, Droit International Privé, 136, 143), 154	25
1888 Clunet, Dr. Int. Privé, 80, 83.....	28
Lyon-Caen's "Studies" in 1882 Clunet, Dr. Int. Privé, 241, 258, 259.....	
Decision, 4 Nov., 1891, of the Cour de Cassation, 103 Journal du Palais (Court-House Journal) for 1892, Part I, page 69; 1892 Clunet, Dr. Int. Privé, 153, 181.....	32
Atchison, T. & S. Ry. <i>vs.</i> Sowers, 213 U. S., 55, 70.....	54
Bank of Augusta <i>vs.</i> Earle, 13 Pet., 519.....	55
Bean <i>vs.</i> Morris, 221 U. S., 485, 486, 487.....	88
Belgenland, The, 114 U. S., 355, 370.....	51
Berlucaux <i>vs.</i> Berlucaux, 7 La. (O. S.), 34.....	91
Blake <i>vs.</i> Nat. Banks, 23 Wall., 307, 317.....	79
Bluntschli, sec. 317.....	18
Bourgogne, La, 210 U. S., 95, 116.....	20, 90

INDEX.

v

	Page
Brantford City, The, 29 Fed., 373, 384, 395.....	16, 51
Buttfield <i>vs.</i> Stranahan, 192 U. S., 470, 495.....	80
Calvo Droit International, I (4th ed.), 552; (Book VI, sec. 3).....	18
Carter, The Maud, 29 Fed., 156.....	53
Cathay, The (1900), 82 L. T., 823; 9 Asp. M. C., 100.....	46
Chamberlain <i>vs.</i> Western Transp. Co., 44 N. Y., 305, 308.....	66
Chattahoochee, The, 173 U. S., 540, 550.....	58
Commell <i>vs.</i> Sewell, 5 Hurl. & Norm., 728.....	49
Congressional Globe, Vol. 23, pp. 332, 713, 714, 715, 716, 717, 718, 719, 758, 777.....	67, 68, 98, 99, 100, 101, 102
Congressional Record:	
Vol. 15, pp. 3973, 3427, 3433, 3434-3452.....	69, 70, 71
Vol. 17, pp. 1110, 1147, 1149, 4571.....	72, 73, 74
Vol. 24, Part 1, pp. 147, 148, 172.....	} 75, 76, 77
Vol. 24, Part 2, pp. 1180, 1291.....	
Cope <i>vs.</i> Doherty, 4 Kay & Johns, 367; 2 De Gex & J., 614.....	24, 56, 94
Crapo <i>vs.</i> Kelly, 16 Wall., 610, 624, 625.....	19, 55
Cuba R. Co. <i>vs.</i> Crosby, 222 U. S., 173, 478, 479.....	51, 85, 86, 89, 91
Crashley <i>vs.</i> Press Pub. Co., 179 N. Y., 27.....	85
Cochran <i>vs.</i> Ward, 31 N. E. Rep., 581.....	92
Commonwealth <i>vs.</i> Chapman, 13 Mete., 68.....	90
Carpenter <i>vs.</i> Grand Trunk R. R., 72 Me., 388.....	86
Crosby <i>vs.</i> Cuba R. Co. (C. C.), 158 Fed., 144, 147.....	85
Collector, The, <i>vs.</i> Richards, 23 Wall., 246, 258.....	80
Dainese <i>vs.</i> Hale, 91 U. S., 13, 20, 21.....	89
Davis <i>vs.</i> Curry, 5 Ky., 238, 240, 241.....	91
Delaware R. Ferry <i>vs.</i> Amos, 179 Fed., 756.....	94
Delaware, The, 161 U. S., 459, 472.....	65, 79
Dempster <i>vs.</i> Stephen, 63 Ill. App., 126.....	92
Desjardins, 5 Dr. Comm. Marit., 118.....	23
Dicey, Conflict of Laws, 2d ed., sec. 663.....	19
Dio Adelphi, The, decided 25 Nov., 1879, 91 Journal du Palais (Court House Journal) for 1880, p. 603 at p. 609.....	23
Dundee, The, 1 Hagg. Adm., 109, 121.....	92
Eagle Point, The, 136 Fed., 1010; 142 Fed., 453; 201 U. S., 644-4, 10, 49	
Eastern Dredging Co., In re., 138 Fed., 942.....	94
Egyptian Monarch, The, 36 Fed., 773.....	53
Elder Dempster Shipping Co. <i>vs.</i> Pouppirt, 125 Fed., 732, 735....	48
Farley, Ex parte, 40 Fed., 66, 69.....	80
Gray, The Jane, 95 Fed., 693.....	21
Great Western, The, 118 U. S., 520, 534.....	90
Halley, The.....	16
Hamilton, The, 207 U. S., 398, 405.....	19, 20, 49

	Page
Herriek <i>vs.</i> Minneapolis & St. L. Ry., 31 Minn., 11.....	16, 50
Holy Trinity Church <i>vs.</i> U. S., 143 U. S., 457, 464.....	80
Huntington <i>vs.</i> Attrill, 146 U. S., 657, 670, 681, and cases there cited	16, 51
Huss, Matter of, 126 N. Y., 537, 542.....	91
House Exec. Doc., Vol. 27, p. XCV.....	74
International Congress of Antwerp (1885 Clunet, Droit Inter- national Privé, 593, 604)	25
Irrawaddy, The, 171 U. S., 187.....	65
Johan, The Carl, 3 Hagg. Adm., 186.....	56
Jennison <i>vs.</i> Kirk, 98 U. S., 453, 459.....	80
Kaiser Ferdinand Nordbahn <i>vs.</i> M., 57 Reichsgericht, 142.....	14
Kent's Comm. (1), p. 26.....	18, 55
Kong Inge, The (S. R. M. <i>vs.</i> J. C. B. u. Genossen), 49 Reichs- gericht, 182, decision of 18 Nov., 1901.....	32
La Bourgogne, 210 U. S., 95, 115, 116, 138; 139 Fed., 433, 438, 41, 51, 66	
Langdon <i>vs.</i> Young, 33 Vt., 136.....	89
Lamington, The, 87 Fed., 752.....	10, 49, 52, 55
Leon, The, 6 P. D., 148.....	40
Le Forest <i>vs.</i> Tolman, 117 Mass., 109.....	55
Leonard <i>vs.</i> Columbia Nav. Co., 84 N. Y., 48.....	89
Lewis <i>vs.</i> Woodfolk, 2 Baxter (Tenn.), 25.....	89
Liverpool Steam Co. <i>vs.</i> Phenix Ins. Co., 129 U. S., 397, 459....	65
Lindstrom <i>vs.</i> Int. Nav. Co., 117 Fed., 170; 123 Fed., 475.....	21, 49
Lloyd <i>vs.</i> Guilbert, L. R., 1 Q. B., 115, 127 (1865).....	21
Lloyd <i>vs.</i> Matthews, 155 U. S., 222, 227.....	85
Lottawanna, The, 21 Wall., 558, 572.....	41
McDonald <i>vs.</i> Mallory, 77 N. Y., 546.....	20, 89
MacLachlan's Law of Merchant Shipping, 5th ed., p. 128.....	92
Mahler <i>vs.</i> Transp. Co., 35 N. Y., 352.....	55
Main, The, 152 U. S., 122, 126, 128.....	66, 90
Malpica <i>vs.</i> McKown, 1 La. (O. S.), 248, 255.....	91
Mamie, The, 5 Fed., 813; 8 Fed., 367; 110 U. S., 742.....	94
Marshall <i>vs.</i> Murgatroyd, L. R. (1870), 6 Q. B., 31.....	20
Mex. Cen. Ry. <i>vs.</i> Glover, 107 Fed., 356, 361.....	91
Mex. Cen. Ry. <i>vs.</i> Marshall, 91 Fed., 933, 938.....	91
Miller <i>vs.</i> McVeagh, 40 Ill. App., 532.....	92
Minor Conflict of Laws, secs. 195, 214.....	19, 89
Moncan, In re, 14 Fed., 44, 48.....	20
Moore <i>vs.</i> American Trans. Co., 24 How., 1, 39, 40.....	87
Mulhall <i>vs.</i> Fallon, 176 Mass., 266.....	49
Murray <i>vs.</i> Chicago & N. W. Ry. Co., 62 Fed. Rep., 24, 27.....	90
Neptune Nav. Co. <i>vs.</i> Timber Co., 37 Fed., 159.....	48
Newton <i>vs.</i> Cocke, 10 Ark., 169, 173.....	92

INDEX.

vii

	Page
Northern Pacific R. <i>vs.</i> Mase, 63 Fed., 114, 116.....	51
Northern Pacif. R. <i>vs.</i> Babcock, 154 U. S., 190, 197, 198.....	16, 50, 55
Nostra Signora de los Dolores, The, 1 Dodson, 290.....	40, 54
Oceanic Nav. Co. <i>vs.</i> Stranahan, 214 U. S., 320, 333.....	80
Patterson <i>vs.</i> The Barque Eudora, 190 U. S., 169, 176.....	19
Pawashick, The, 2 Lowell, 142.....	92
People <i>vs.</i> Pres., etc., of Manhattan Co., 9 Wend., 351.....	92
People <i>vs.</i> Calder, 30 Mich., 85.....	92
People <i>vs.</i> Merrill, 2 Parker Crim. Rep., 590, 596.....	64
Parrot <i>vs.</i> Mexican Central Ry. Co., 207 Mass., 184.....	87
Pope <i>vs.</i> Nickerson, Federal case 11,274; 3 Story, 465.....	53
Phillips <i>vs.</i> Eyre, L. R., 6 Q. B., 1, 28.....	54
Powell <i>vs.</i> Gt. Northern Ry., 102 Minn., 448.....	55
Providence Co. <i>vs.</i> Hill Mfg. Co., 109 U. S., 578, 588.....	66
Ralli <i>vs.</i> Troop, 157 U. S., 386, 403.....	50
Raynham <i>vs.</i> Canton, 3 Pick., 293.....	91
Richardson <i>vs.</i> Harmon, 222 U. S., 96, 103.....	66, 78, 94
Rundell <i>vs.</i> Comp. Gen. Transatlantique, 100 Fed., 655, 660...	55
Russia, The, 3 Ben., 471.....	48
Rutherford II, c. 9, secs. 8, 19.....	18
Sawyers, <i>In re</i> , 12 Ch. Div., 522, 528.....	54
Santa Cruz, The, 1 C. Rob., 50, 60, 64, 67.....	56
Sachen, K. & B., <i>vs.</i> M., Rep. I, 246-00.....	36
Shallus <i>vs.</i> U. S., 162 Fed., 653.....	80
Southern Pacific Co. <i>vs.</i> de Valle da Costa, 190 Fed., 689; 176 Fed., 843	21, 49
Smith <i>vs.</i> Condry, 1 How., 28.....	49, 50
Schluter <i>vs.</i> Bowery Bank, 117 N. Y., 125, 131.....	91
Scotia, The, 14 Wall., 170, 184, 185.....	19, 49, 54
Slater <i>vs.</i> Mexican National R. R. Co., 194 U. S., 120, 126.....	88
Saxonia, The, Lush Adm., 410.....	40
Scales <i>vs.</i> Sir John Key, 11 Ad. & Ell., 819.....	92
Scotland, The, 105 U. S., 24, 28, 29, 30, 32, ... 3, 25, 41, 43, 49, 50, 57, 90	90
Stewart <i>vs.</i> Balt. & O. R. R., 168 U. S., 445.....	21
Stokesley, The (1905 Darras, Dr. Int. Prive, 114, 125).....	32
Stokes <i>vs.</i> Macken, 62 Barb., 145.....	91
Stevens, John G., The, 170 U. S., 113, 120.....	50
States <i>vs.</i> Carter, 27 N. J. (3 Dutcher), 499.....	64
Sawyers, <i>In re</i> , 12 Ch. Div., 522, 528.....	54
Southern Pacif. Co. <i>vs.</i> De Valle da Costa, 190 Fed., 689, 176 Fed., 843	49
Svea (The) and The Selne (74 Reichsgericht, 46, Decision of 6 July, 1910).....	38

	Page
Texas & P. Ry. <i>vs.</i> Cox, 145 U. S., 593.....	50
Thingvalla, The, 48 Fed., 764.....	90
Thommåsen <i>vs.</i> Whitwill, 12 Fed., 894, 895, 896, (1) and (4)..	48
Thompson <i>vs.</i> Ketcham, 8 John., 190.....	55
Tucker <i>vs.</i> Alexandroff, 183 U. S., 424, 438.....	49
United States <i>vs.</i> Davis (per Story, J.), 2 Sumn., 482.....	55
United States <i>vs.</i> Klintock (per Marshall, C. J.), 5 Wheaton, 144, 152.....	19, 55, 62
United States <i>vs.</i> Holmes, 5 Wheaton, 412, 417.....	52
United States <i>vs.</i> Palmer, 3 Wheaton, 610, 631, 634, 643....	19, 55, 59
U. S. <i>vs.</i> Reid, 12 How., 361, 363.....	90
U. S. <i>vs.</i> Wilson, 58 Fed., 768.....	80
U. S. Comp. Stat., p. 2945, 23 Stat., 53, 57.....	68, 71
U. S. R. S., sec. 4289, 24 Stat., 80.....	70, 71
U. S. Laws, 31st Cong., 1850-51, pp. 635, 636.....	93
Vattel I, c. 19, sec. 216.....	18
Valroger, Droit Maritime, sec. 2124.....	42
Virginia, The State of, 60 Fed., 1018.....	10
Volant, The, 1 W. Rob., 383, 387.....	41, 90
Whitford <i>vs.</i> Panama R. Co., 23 N. Y., 465, 468, 471.....	55, 86, 89
Ward, E. B., The, 17 Fed., 456, 459.....	20
Wheaton, 8th ed., sec. 106.....	18
Wharton, Internat. Law, Dig. I, sec. 26.....	18
Wadsworth <i>vs.</i> Boysen, 148 Fed., 771.....	80
Western Union Tel. Co. <i>vs.</i> Call Pub. Co., 181 U. S., 92, 103....	90
Westlake, Private International Law (5th ed.), pars. 202 202a, pp. 288-291.....	40
Wooden <i>vs.</i> W. N. Y. & P. R. Co., 126 N. Y., 10, 15.....	86
Wharton, Conflict of Laws (3d ed.), sec. 356.....	18
Wharton, Conflict of Laws, sec. 473.....	19
Wilson <i>vs.</i> McNamee, 102 U. S., 572, 574.....	15, 19
Wild Ranger, The (P. C.), Lush. Adm., 553.....	40, 46, 56, 94
Zollverein, The, Swabey, 96.....	40

INDEX OF CASES IN LIST OF AUTHORITIES CORRECTING THE APPELLANT'S POINTS.

	Page
Abbott, Merchant Ships, 637.....	103
Alaska, The, 130 U. S., 201.....	112
Amalia, The, 1 Moore, P. C., N. S., 471, 482.....	103, 111, 112
Andalusian, The, 3 P. D., 182, 189.....	103
Apollo, The.....	110, 111
Atchison, T. & S. F. Ry. vs. Sowers, 213 U. S., 55, 67, 68.....	112
Atlantic, The (Levinson vs. Oceanic).....	108
Belgenland, The, 114 U. S., 355, 365.....	110
Britannic, The, 39 Fed., 395.....	113
British America, The, 9 Ben., 516.....	108
Brougham vs. Oceanic S. Nav. Co. (The Titanic), 205 Fed., 857.....	108
Camille vs. Couch, 40 Fed., 176.....	110
Carl Johan, The, 1 Hagg. Adm., 113; 3 Hagg. Adm., 186.....	103, 110
Chattahoochie, The, 173 U. S., 540, 550.....	107
Compania la Flecha vs. Brauer, 168 U. S., 104, 118.....	108
Cope vs. Doherty, 4 Kay & J., 367, 391.....	111, 112
Danschewski vs. Larsson, 3 Revue Int. du Droit Marit, 348.....	109
Dundee, The, 1 Hagg. Adm., 109, 120.....	103
Eagle Point, The, 142 Fed., 453; 201 U. S., 644.....	112, 113
Foltz vs. St. Louis R. Co., 60 Fed., 316.....	108
G. I. S. Colliery Co. vs. Schurmans, 1 J. & H., 180.....	106
Hale vs. Allison, 188 U. S., 56.....	114
Hamilton, The, 134 Fed., 95; 207 U. S., 398, 405.....	111, 112
John Bramall, The, 10 Ben., 495, 502.....	108
Kiefer vs. G. Trunk Ry., 12 App. Div., 28, 31.....	112
La Bourgogne, 117 Fed., 261; 139 Fed., 433; 210 U. S., 95.....	110, 111
Liverpool Steam Co. vs. Phoenix Ins. Co., 129 U. S., 397.....	108
Lindstrom vs. Int. Nav. Co., 117 Fed., 170.....	111
Le Forest vs. Tolman, 117 Mass., 109.....	112
Levinson vs. Oceanic S. Nav. Co., 15 Fed. Cas., 422.....	108
Louisville Trust Co. vs. Knott, 191 U. S., 225, 236.....	109
MacLachlan, Merchant Shipping, 126.....	103
Main, The, 152 U. S., 122, 126.....	103
Marsden, Collisions, c. 7.....	103
Marselis vs. Morris Co. Canal, 1 N. J. Eq., 31, 35.....	114
Mellona, The, 3 W. Rob., 16, 20.....	103
New vs. Oklahoma, 195 U. S., 252, 256.....	109
Norge, The, 156 Fed., 845, 850.....	109
Nor. Pac. vs. Babcock, 154 U. S., 190.....	112
Powell vs. Gt. Northern Ry., 102 Minn., 448.....	112

	Page
Pope vs. Nickerson, 3 Story, 465, 474, 483.....	112
Pritchard vs. Norton, 106 U. S., 124, 131.....	112
Queen vs. Keyn, 2 Exch. Div., 63, 138.....	103
Rundell vs. Comp. G. Transatlantique, 94 Fed., 366; 100 Fed., 655	111
Scotia, The, 14 Wall., 170, 185, 188.....	109
Scotland, The, 105 U. S., 24.....	numerous
Schulenberg Lumber Co. vs. Hayward, 20 Fed., 422.....	113
Shelby vs. Guy, 11 Wheaton, 361, 371.....	112
Slater vs. Mex. N. R. R., 194 U. S., 120, 126.....	112
State of Virginia, The, 60 Fed., 1018.....	107, 108
Stokesley, The, 1905 Darras Dr. Int. Prive, 114.....	112
Strathdon, The, 89 Fed., 374, 380.....	109
Temperley & Moore, Merchant Shipping Acts.....	103
Thingvalla, The, 48 Fed., 764.....	109
Thomassen vs. Whitwell, 9 Ben., 403, 409.....	109
Thomassen vs. Whitwell, 12 Fed., 894.....	106, 110, 111
Town of Venice vs. Woodruff, 62 N. Y., 462, 470.....	114
U. S. vs. More, 3 Cranch, 159, 171.....	109, 110
U. S. vs. Sanges, 144 U. S., 310, 319.....	109
Volant, The, 1 W. Rob., 383, 387.....	103
Washington County vs. Williams, 111 Fed., 801, 812.....	113
Wentworth Lunch Co., Matter of, 191 Fed., 821.....	108
Westlake Private Int. Law, § 201.....	110
Wilson vs. Dickson, 2 B. & Ald., 2.....	103

SUPREME COURT OF THE UNITED STATES.

No. 798, OCTOBER TERM, 1913.

THE OCEANIC STEAM NAVIGATION COMPANY,
LIMITED, OWNER OF THE "TITANIC,"*Petitioner-Appellant,*

vs.

WILLIAM J. MELLOR AND HARRY ANDERSON,
*Claimants-Appellees.***LIST OF AUTHORITIES FILED BY LEAVE OF THE
COURT.**REFERENCE TO AUTHORITIES GIVING THE HISTORY OF THE
DEVELOPMENT OF THE LAW OF GREAT BRITAIN ON THE
SUBJECT OF THE LIMITATION OF SHIPOWNERS' LIABILITY.

At the request of certain members of this court for information as to where the history of the development of the law of Great Britain on the subject of the limitation of shipowners' liability could conveniently be found, we mention:

The Volant, 1 W. Rob., 383, 387.*The Carl Johan*, 1 Hagg. Adm., 113.*The Dundee*, 1 Hagg. Adm., 109, 120, 121.*The Mellona*, 3 W. Rob., 16, 20.*Wilson vs. Dickson*, 2 B. & Ald., 2.*The Amalia*, 1 Moore P. C., N. S., 471, 482.*Chapman vs. Royal Netherlands S. Nav. Co.*, 4 P. D.,
157.*The Andalusian*, 3 P. D., 182, 189.*The Main*, 152 U. S., 122, 126-128.Temperley & Moore, Merchant Shipping Acts (2d
ed.), pp. 292-297.

Maclachlan, Merchant Shipping (5th ed.), 126-131.

Abbott, Merchant Ships (14th ed.), 637-642.

Marsden, Collisions, chap. 7.

In connection with the history of the British acts regulating the liability of shipowners for torts happening without personal fault on their part, the court may desire to refer to the text of the various acts so as to examine the language in which Parliament has expressed its will in respect of the class of ships and shipowners upon which the benefits of the acts were conferred. There have been two sorts of British statutes: (*a*) those that regulate the liability of shipowners for loss or destruction of goods on board their ships, owing to fire or to robbery or to embezzlement, and (*b*) those that limit the liability of shipowners for torts generally.

A. In respect of fire, robbery, or embezzlement, Parliament referred to "*any ship or vessel*" in the acts of

7 Geo. II, c. 15 (1734, and
26 Geo. III, c. 86 (1786),

and to "*any sea-going ship*" in the act of

17 & 18 Vict., c. 104; M. S. A., 1854, sec. 504,

and (for greater clearness, Temperley, Merchant Shipping Acts, 2d ed., p. 293) to "*any British sea-going ship*" in the act of

57 & 58 Vict., c. 60; M. S. A., 1894, sec. 502.

B. In respect of limitation of shipowners' liability for torts generally, Parliament referred to "*any ship or vessel*" in the act of

63 Geo. III, c. 159, sec. 1 (1813,

and to "*any sea-going ship*" in the act of

17 & 18 Vict., c. 104; M. S. A., 1854, sec. 504,

and to "*any ship, whether British or foreign,*" in the acts of

25 & 26 Vict., c. 63; M. S. A., 1862, sec. 54, and
57 & 58 Vict., c. 60; M. S. A., 1894, sec. 503.

The following acts, dealing with the same general subjects, afford no additional information concerning the will of Parliament concerning the scope of the statutes regulating shipowners' liability:

61 & 62 Vict., c. 14 (1898).

63 & 64 Vict., c. 32 (1900).

6 Edw. VII, c. 48, secs. 69, 70, 71 (1906).

APPELLEES' LIST OF AUTHORITIES WHICH CORRECT APPELLANT'S ERRORS.

In compliance with the leave granted by this court at the close of the hearing, we append a list of authorities embodying principles which seem to us to require consideration in connection with the arguments and assertions contained in appellant's brief. These authorities would have been incorporated in appellees' brief, had this not been impossible owing to the fact that appellant's brief was not filed or supplied to appellees' counsel until the very day of the hearing, and that at the time when appellees' brief had to be sent to the printer to avoid the risk of default, the only proofs of appellant's brief supplied to appellees' counsel covered fragments amounting in all to about one-half of the brief as filed.

We feel that it would have been advantageous to the court if, in the following list of authorities, we had stated the precise principle which we believe to be there laid down and the manner of application of the principle to the Titanic case. We have reluctantly refrained from so doing, fearing that to do so might lead us slightly beyond the scope of the leave granted.

The method which we pursue is, therefore, to give in briefest terms the substance of the passage of appellant's brief which we believe to be erroneous, inaccurate or ill-founded, or to require qualification or explanation, and to

follow the statement of appellant's proposition by a bare citation of the authority which supplies the needed correction.

Only a trifling fraction of appellant's errors are thus noticed, however, as we feel that the remaining errors were sufficiently anticipated in our original brief.

Brief,* p. 9 (middle), p. 11 (middle): That this court has held that all foreign ships, without distinction or discrimination, are entitled to obtain in the United States courts the benefit of the act of 1851 (whether or not the disaster may have happened under the flag or flags of a single foreign country). *Contra*:

The Scotland, 105 U. S., 24, 29 (last three lines), 30 (first six lines).

La Bourgogne, 210 U. S., 95, 115 (last five lines).

Brief, p. 10: That in England arguments in favor of excluding all foreign shipowners from the benefit of the British act (as it was worded before 1862) had been successful. *Contra*:

G. I. S. Colliery Co. vs. Schurmans, 1 Johns. & Hemming, 180; as explained in

Queen vs. Keyn, 2 Exch. Div., 63, 138.

Brief, p. 10: That the diverse nationalities of the flags of the *Scotland* and *Kate Dyer* were only significant, because in this way, the parties litigant were of different nationality. *Contra*:

Mr. Justice Blatchford (who concurred in the opinion in *The Scotland*), in *Thomassen vs. Whitwell*, 12 Fed., 894, 895, 896 (1) and (4).

*"Brief" wherever referred to in this memorandum means Appellant's Brief.

Brief, p. 11: That this court in *The Scotland* completely rejected the considerations (*e. g.*, that the statutes of any country *ex proprio vigore*, do not govern beyond the territorial boundaries—including, by legal fiction, the ships—of that country) upon which the English cases, construing the British act, were based. *Contra:*

The Scotland, 105 U. S., 24, 31 (last ten lines), 32 (top).

Or that this court has disapproved the result reached in any English decision except *The Wild Ranger* and *The Carl Johan*, or that it has rejected any British principle of decision, except the British principle that where, by reason of a collision at sea involving one or more foreign ships, the British Limitation Act does not apply *ex proprio vigore*; the general maritime law should govern to the exclusion of the national conception of justice, as expression in the laws (statutory and non-statutory) on the forum. *Contra:*

The Scotland, 105 U. S., 24, 32 (middle).

Brief, p. 23: That there is any inconsistency in applying the third section of the Harter Act *ex proprio vigore* to all ships, domestic and foreign, carrying merchandise to or from our ports, and at the same time in applying the Limitation Act *ex proprio vigore* to all ships, domestic and foreign, within our territorial waters and to domestic ships on the high seas; and, Brief, p. 24, that this court has in fact interpreted both acts alike and on the same reasoning. *Contra:*

The Chattahoochie, 173 U. S., 540, 550.

Opinion of Judge Holt herein fols. 98, 104-108.

Brief, p. 27: That Judge Benedict's decision in *The State of Virginia*, 60 Fed., 1018, necessarily implies a belief on his part that the act of 1851 *ex proprio vigore* governs disasters in foreign territorial waters and disasters at sea under only one foreign flag (even where questions of public policy do

not enter), notwithstanding the fact that all the claims against The State of Virginia were for damage to cargo shipped at New York. *Contra:*

Liverpool Steam Co. vs. Phœnix Ins. Co., 129 U. S., 397, 459, 461.

Compania la Flecha vs. Brauer, 168 U. S., 104, 118.

The John Bramall (per Benedict, J.), 10 Ben., 495, 502, 503.

The British America (per Benedict, J.), 9 Ben., 516.

See *Opinion of Judge Holt* herein fol. 92.

Brief, pp. 28, 31: That the scope of the act of 1851 was involved in the case of *The Atlantic* (*Levinson vs. Oceanic S. Nav. Co.*, 15 Fed. Cas., 422; facts stated in *Marckwald vs. Oceanic S. Nav. Co.*, 11 Hun. 462), on the theory that the jurisdiction of the admiralty court to decide the issues presented in a limited liability proceeding, founded upon the Atlantic disaster, must depend upon whether it was legally correct to confer upon the Atlantic the benefits of the act of 1851. *Contra:*

Levinson vs. Oceanic S. Nav. Co., 15 Fed. Cas., 422, 423; eighteenth line of first column of p. 423.

Judge Holt's Opinion herein, fols.* 66, 67.

Brougham vs. Oceanic S. Nav. Co.; *The Titanic*, (C. C. A.) 205 Fed., 857.

Foltz vs. St. Louis R. Co., (C. C. A.) 60 Fed., 316.

Matter of Wentworth Lunch Co., (C. C. A.) 191 Fed., 821.

Brief, pp. 30-32: That there are many cases applying the act of 1851 to a disaster involving a single foreign vessel or to one involving two foreign vessels of the same nationality (citing, however, only *The Thingvalla*, *The Strathdon* and *The Norge*) and that these cases are entitled to weight, al-

* Folio references are to folios of transcript of record brought into this court in connection with application for certiorari herein.

though no party litigant asked for, and the court did not consider the application of foreign law. *Contra:*

Louisville Trust Co. vs. Knott, 191 U. S., 225, 236.

New vs. Oklahoma, 195 U. S., 252, 256.

U. S. vs. Sanges, 144 U. S., 310, 319.

U. S. vs. More, 3 Cranch, 159, 171.

That The Norge was such a case. *Contra:*

The Norge, 156 Fed., 845, 846 (sixth and seventh lines), 850.

Judge Holt's Opinion herein, fol. 85.

Danschewski vs. Larsson, 3 Revue Int. du Droit Marit., 348.

Thomassen vs. Whitwell, 9 Ben., 403, 409.

That The Strathdon was such a case. *Contra:*

The Strathdon, 89 Fed., 374, 375, 380.

Judge Holt's Opinion herein, fols. 84, 85.

17 & 18 Vict., c. 104, sec. 503.

25 & 26 Vict., c. 63, sec. 54.

That The Thingvalla was such a case. *Contra:*

The Thingvalla, 48 Fed., 764, 765.

Judge Holt's Opinion herein, fols. 80, 81.

Danschewski vs. Larsson, *supra*.

Thommassen vs. Whitwell, 9 Ben., 403, 409.

Brief, p. 36 (top): That it is only when colliding ships belong to the same nation that the law of the flag will be applied to determine whether a particular vessel is responsible for the collision by reason of an infraction of the rules and principles for the avoidance of collision. *Contra:*

The Scotia, 14 Wall., 170, 185, 188.

Brief, p. 37 (bottom): That the nationality of parties litigant was material to determine the issues presented by

The Scotland, because it was so to determine those presented by The Belgenland. *Contra*:

The Belgenland, 114 U. S., 355, 365.

Camille vs. Couch, 40 Fed., 176.

Brief, p. 39 (top): That the British claimant (the appellee Mellor) is a voluntary party to the American litigation, notwithstanding the injunction. *Contra*:

Westlake, Private International Law, § 201.

Brief, p. 39 (bottom): That (a) *La Bourgogne*, 210 U. S., 95, involved vessels of a single foreign nationality (the colliding vessels being French and British respectively), because of the alleged fact that (b) no owner of the *Cromartyshire* or of her cargo, nor any person on board of her, appeared as a party litigant and this was a material factor. *Contra*:

(a) *Thomassen vs. Whitwell* (per Blatchford, J.), 12 Fed., 891, at p. 895 (1) and at p. 896 (2).

(b) *U. S. vs. More*, 3 Cranch, 159, 171.

La Bourgoyne, 117 Fed., 261; 139 Fed., 433; 210 U. S., 95.

Brief, pp. 40, 41: That under British judicial doctrine, speaking of a vessel on the high seas as governed by the laws of the flag of the country is a mere metaphor (citing *Queen vs. Keyn*, 2 Ex. D., 63, 94), and that it should not be resorted to for the purpose of limiting the liability of an offending vessel under the laws of her flag. *Contra*:

The Carl Johan, 3 Haag. Adm., 186, as explained by Professor Westlake, Private International Law, §201.

The Apollo (Cour de Cassation) 103 Journal on Palais for 1892, part I, p. 69.

and that under British judicial doctrine, the general law maritime, or the *lex fori*, and not the law of the flag, governs the rights and liabilities of all parties resulting from a collision at sea between vessels of the same nation (citing *Chartered M. Bank of India vs. Netherlands I. S. Nav. Co.*, 10 Q. B. D., 521). *Contra*:

Cope vs. Doherty, 4 Kay & J., 367, 391, as explained in *The Amalia*, Moore P. C., N. S., 471, 482, last eight lines.

Brief, p. 40: That it would have made a difference in *La Bourgogne*, 210 U. S., 95, if the *Cromartys* had appeared as a "contesting" vessel. *Contra*:

Tandonnet vs. The Apollo, 1892 Clunet Dr. Int. Privé, 153; a litigation involving the *Precurseur*.

Fritze vs. The Apollo, 1903 Clunet Dr. Int. Privé, 136; a litigation not involving the *Precurseur*.

The Scotland, 105 U. S., 24; using "contesting" vessel as synonymous with "colliding" vessel.

Mr. Justice Blatchford in *Thomassen vs. Whitwell*, *supra*.

Brief, p. 41 (ninth to eleventh lines): That British law cannot govern the *Titanic* because the iceberg was outside the *Titanic* (and doubtless because many deaths occurred outside), apparently relying on the principle in *Rundell vs. Campagnie G. Transatlantique*, 94 Fed., 366; 100 Fed., 655, and in *La Bourgogne* (D. C.), 117 Fed., 261, 271. *Contra*:

La Bourgogne, 139 Fed., 433, 438, 439; aff'd 210 U. S., 95.

The Hamilton (D. C.), 134 Fed., 95, 96 (twenty-fourth line), 99; aff'd 207 U. S., 398, 405.

Lindstrom vs. Int. Nav. Co. (D. C.), 117 Fed., 170.

Brief, p. 41 (last line), p. 42 (top): That a distinction can be drawn between (1) meting out justice to all persons affected by the *Titanic* disaster, however different their nationalities, in accordance with the British death statutes

(in cases falling within their terms), and (2) meting out justice to such persons in accordance with the limitation acts. *Contra:*

- Cope vs. Doherty*, 4 Kay & J., 367, 384.
The Amalia, 1 Moore P. C., N. S., 471, 474.
The Eagle Point, 142 Fed., 453; 201 U. S., 644.
Slater vs. Mexican N. R. R. Co., 194 U. S., 120, 126, especially lines 19 to 22.
Atchison, T. & S. F. Ry. vs. Sowers, 213 U. S., 55, 67, 68.
Nor. Pac. R. R. vs. Babcock, 154 U. S., 190.
Powell vs. G't Northern Ry., 102 Minn., 448.
Pope vs. Nickerson, 3 Story, 465, 474 (top), 483.
Le Forest vs. Tolman, 117 Mass., 109.
Kiefer vs. G. Trunk Ry., 12 App. Div., 28, 31.
Shelby vs. Guy, 11 Wheat., 361, 371.
Pritchard vs. Norton, 106 U. S., 124, 131.
The Stokesley,* 1905 Darras Droit Int. Prive, 114, 122, 125 (bottom).

Brief, p. 42: That the Cromartyshire (La Bourgogne, 210 U. S., 95), even if negligent, would not have been liable for claims founded on the deaths of passengers on La Bourgoyne under the ruling of this court in *The Alaska*, 130 U. S., 201, appellant's argument being founded upon the assumption that the foreign law of *The Alaska's* flag (Lord Campbell's Act) had been pleaded and proved, as well as that the laws of New York, the home port of the pilot-boat *Columbia*, were judically noticed. *Contra:*

- The Hamilton; In re Clyde S. S. Co.*, 134 Fed., 95, 99, tenth line.
The Alaska, transcript of record in this court, No. 1217, October term, 1888; libel, fols. 1-7; supplementary libel, fols. 12-15.
The Scotland, 105 U. S., 24, 29 (third, fourth and fifth lines from bottom), 31 (fifteenth line), 33 (eighth and ninth lines).

*A translation of the opinion of Judge Letellier will be filed if the court will receive it.

Brief, p. 43 (top): That *The Eagle Point*, 142 Fed., 453, involved no question of limitation of liability. *Contra:*

The Eagle Point, 142 Fed., 453, 454 (tenth, eleventh and twelfth lines).

Brief, p. 43: That *The Eagle Point*, 142 Fed., 453; 201 U. S., 644, is inconsistent with *The Britannic*, where the White Star Line, under the British limitation rule (*The Milan*, 1 Lush., 388), was liable as owner of *The Britannic* for half the cargo damage, notwithstanding the invalid negligence clause of her New York bills of lading, and was liable for the other half as owner of *The Celtic*. *Contra:*

The Britannic, 39 Fed., 395.

Brief, p. 46: That the purpose of the admiralty rules of this court was to enable the liability or freedom from liability of a shipowner to be determined in a single suit (actions in the State courts and elsewhere being enjoined), irrespective of any showing being made in the petition of a proper case for limitation, should liability afterwards be established. *Contra:*

Sections 1 and 2 (exonerating shipowners entirely from liability in certain cases) of the *Act of 1851*, printed in *Norwich Co. vs. Wright*, 13 Wall., 104, 105.

Admiralty Rule 54, eleventh and twelfth lines of Rule 54, as printed at p. 5 of appellant's brief.

R. S., sec. 4284.

R. S., sec. 720; Judicial Code, 1911, sec. 265.

Brief, p. 46: That such a consolidation at the instance of a tort-feasor, irrespective of any possible right of limitation, is justifiable and "beneficient." *Contra:*

Washington County vs. Williams, 111 Fed., 801, 812.
Schulenberg-Boeckeler Lumber Co. vs. Hayward, 20 Fed., 422.

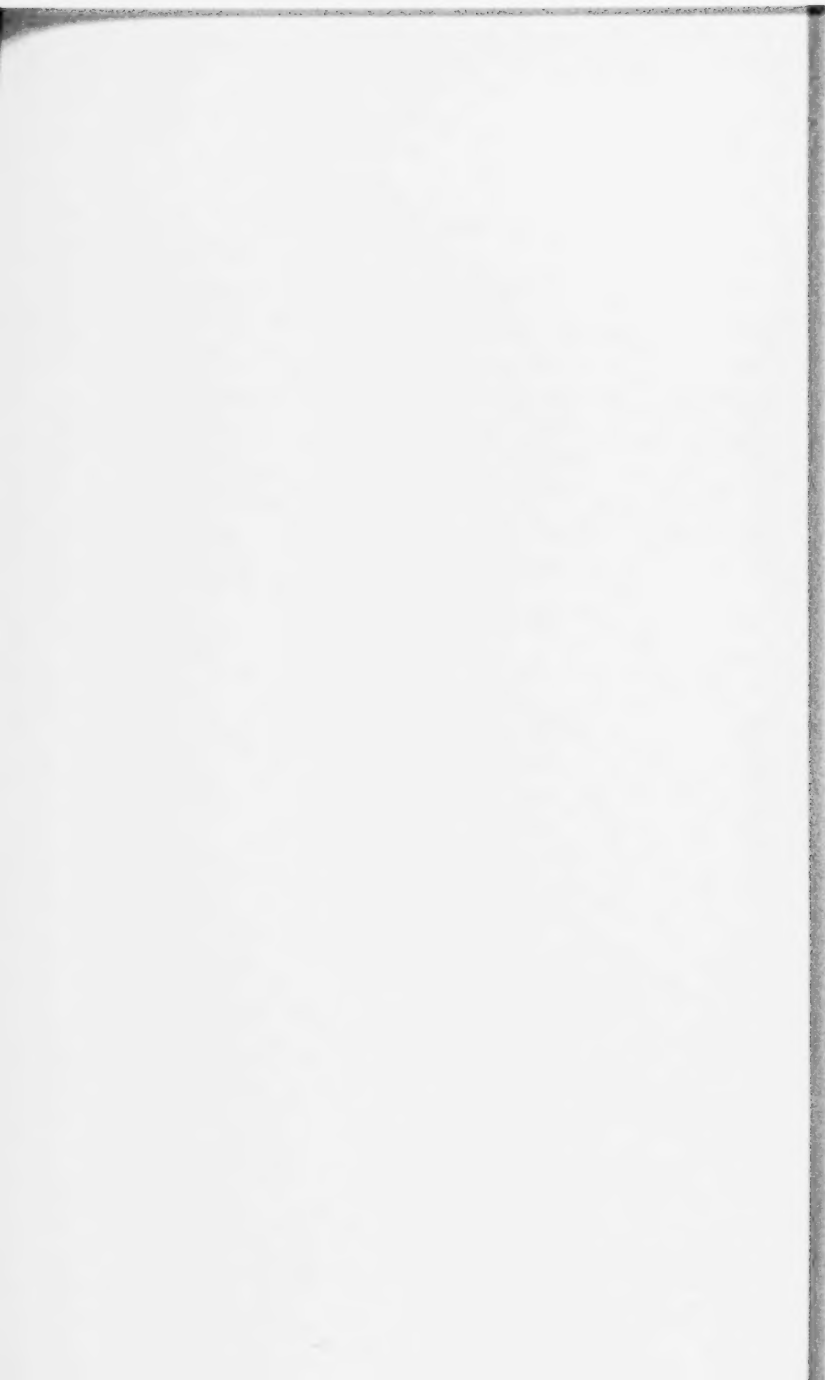
Marselis vs. Morris Canal Co., 1 N. J. Eq., 31, 35-39.

Hale vs. Allison, 188 U. S., 56, 78.

Town of Venice vs. Woodruff, 62 N. Y., 462, 470.

Respectfully submitted,

FREDERICK M. BROWN,
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JAN 13 1914
JAMES D. MAH
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Supreme Court of the United States

OCTOBER TERM, 1913—No. 798.

IN THE MATTER OF THE PETITION

of

THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED,
FOR LIMITATION OF ITS LIABILITY AS OWNER
OF THE STEAMSHIP TITANIC.

THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED,
Petitioner-Appellant,

vs.

WILLIAM J. MELLOR AND HARRY ANDERSON,
Claimants-Appellees.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT.

THE TITANIC

BRIEF ON BEHALF OF APPELLEES IN FA-
OF APPLICATION OF FOREIGN LAW.

FREDERICK M. BROWN,
GEORGE WHITFIELD BETTS, JR.,
Advocates for Appellees.

HUNT, HILL & BETTS,
Proctors for Appellees.

Supreme Court of the United States

OCTOBER TERM—1913.

No. 798.

In the Matter

of

The Petition of the OCEANIC
STEAM NAVIGATION COMPANY,
LIMITED, for Limitation of its
Liability as Owner of the
Steamship TITANIC

OCEANIC STEAM NAVIGATION
COMPANY, LIMITED,
Petitioner-Appellant,

WILLIAM J. MELLOR and HARRY
ANDERSON,
Claimants-Appellees.

BRIEF ON BEHALF OF MELLOR AND ANDERSON, APPELLEES.

The subject matter of this litigation is the shocking and memorable disaster wherein the

Titanic, then the greatest and most valuable ship in the world, colliding in midocean with an iceberg, sank on her maiden voyage, carrying to their deaths 1490 passengers and mariners; the disaster into whose causes, the Senate of the United States immediately directed an investigation by its Committee on Commerce or a sub-committee thereof and into whose causes, a similar investigation was afterwards ordered by the British Government.

The litigation has taken the form of a proceeding for the limitation of shipowners' liability instituted in New York by the White Star Line or the Oceanic Steam Navigation Company, Limited (as its official title runs) in its capacity as sole owner of the Titanic, a British registered vessel hailing from Liverpool. Mellor and Anderson, the other parties to the present record, are sufferers in the Titanic disaster who, before they had chosen a forum in which to seek redress for their losses (Certificate, fol. 10), were forced into the limitation proceeding in consequence of the injunction of the District Court which was granted simultaneously with the filing of the shipowner's petition for limitation. Upon exceptions to the sufficiency of the petition being filed by Mellor and Anderson, the petition as against these exceptants was dismissed by the District Court (Decree, Certificate, fols. 21-23).

The grounds of the decision of the District Court are stated in an opinion by Judge Holt, reported in 49 N. Y., Law Journal, 685, and appearing at folios 49 to 115 of the Transcript of Record before the Circuit Court of Appeals and now before this Court in connection with a petition for a writ of certiorari.

Judge Holt ruled that, in respect of any limitation of a shipowner's liability for a disaster at sea, affecting no other vessel than a single British vessel, the owner must seek his remedy, if at all, under the limited liability provisions of British law, and that the present petitioner was not entitled in the face of the exceptions to continue his pending proceeding because no limited liability provision of the British law was set up in the petition or was judicially known to the Court. Moreover, the facts in respect of tonnage, essential to the application of the British Statute, were not alleged in the petition.

Judge Holt's conclusions were founded primarily upon the decision of this Court in the case of *The Scotland*, 105 U. S., 24, and upon the decision of the Circuit Court of Appeals for the Third Circuit in the case of *The Eagle Point*, 142 Fed., 453.

The *Scotland*, an action in personam between two shipowners and several other parties, had presented for decision the question as to what law of limitation of shipowners' liability should govern the rights and liabilities growing out of a collision at sea between two ships of different nationalities. Mr. Justice Bradley, after stating that, if the two ships were of different nationalities (as they were in the *Scotland* case), the Court would apply the *lex fori* as a rule of justice, continues:

"But if the contesting vessels belonged to the same foreign nation, the Court would assume that were subject to the law of their nation, carried under their common flag, and would determine the controversy accordingly." *The Scotland*, 105 U. S., 24, 29.

This language was quoted and relied on by Judge Holt in his opinion (Transcript of Record, before this Court on petition for certiorari, fols. 51 to 115 at fol. 72).

Taken in conjunction with the following passage from his opinion (Transcript of Record, fol. 93), it furnishes the *ratio decidendi* of his decision:

"I can see no reason for a different application of the rule in a case where a vessel is injured by collision with some floating object belonging to no country or where a vessel founders on the high seas without any appreciable cause than in the case of injuries occasioned by the collision of two vessels of the same nation."

The Eagle Point (142 Fed., 543), also relied on by Judge Holt, was a case of collision at sea between two British vessels, owing to their mutual fault. The Circuit Court of Appeals applied as against libelling American owners of cargo shipped at New York, the British law of special limitation of liability, applicable to collision by mutual fault; so as to hold the *Eagle Point* liable for only 50 per cent. instead of 100 per cent. of the actual cargo damage. The *Biela*, the other colliding vessel, sank in consequence of the collision and her owner was not sued.

Judge Holt's opinion is lucid and thorough, reviewing the entire subject and considering practically every American decision. The Court is respectfully referred to Judge Holt's opinion as a convincing short statement of the law applicable to the case. The omission from this brief of much of

what is contained in Judge Holt's opinion is entirely in the interest of brevity.

An appeal from this decree in favor of Mellor and Anderson has been prosecuted by the White Star Line to the Circuit Court of Appeals for the Second Circuit and, after a hearing in that Court, is pending undecided. The cause is now in this Court upon questions of law certified to it by the Circuit Court of Appeals.

THE CERTIFICATE TO THIS COURT.

The significant facts upon which the certified questions are predicated, are stated twice in the certificate; first in the "Statement of Facts" (Certificate, fol. 2) and again as a premise or assumption incident to each of the three questions certified (Certificate, fol. 3). These facts are (1) that the disaster occurred on the high seas, (2) that only one vessel was concerned therein, (3) that the vessel concerned was British and (4) that the claimants are of different nationalities. The questions certified, as we understand them, are in substance these:

(a) Is the foreign shipowner entitled to maintain in the District Court of the United States an affirmative proceeding for limitation of his liability incident to such ownership (that is either a proceeding strictly conformable with R. S., secs. 4283, 4284 and 4285 and with Admiralty, Rules 54 and 56 of this Court or a proceeding of the same general nature), if *no showing* be made to the District Court as to what the law of the ship's flag is on the subject of limitation of shipowners' liability?

(b) Is the foreign shipowner entitled to maintain such a proceeding, if it "appears" to the Dis-

strict Court that the law of the ship's flag *does confer a right of limitation* of liability upon shipowners, but a right differing materially from that which is recognized in the laws of the United States?

(c) If the foreign shipowner is entitled to maintain such a proceeding and if the law of the flag confers a right of limitation, differing materially from that of the *lex fori*, is the amount of the shipowner's liability governed by the law of the flag or by the *lex fori*?

It cannot be supposed that the second certified question was predicated upon a state of facts at variance with that presented in the first certified question. It is undoubtedly based on the view that without any showing made to the court by a litigant concerning the status of the British law, the trial court was entitled to take such qualified and limited judicial notice thereof as to ascertain merely (1) whether, by British law, the liability of shipowners was limited or unlimited, and (2) if limited, whether the British law of limited liability was in substance the same as, or different from ours.

The language of the questions as certified is not happy; for, upon a first sight, it might seem that this Court is being asked whether, under the conditions mentioned in the questions, a proceeding to obtain the benefit of the *American principle of limitation* is maintainable, since that is the only proceeding actually referred to in Sections 4283, 4284 and 4285 of the Revised Statutes and in Admiralty Rules 54 and 56 of this Court. But the meaning of the Circuit Court of Appeals must be as above stated.

Otherwise its last question would amount to an inquiry as to whether, if it be once decided that a proceeding to obtain the benefit of the American principle of limitation of liability (as distinguished from a limitation proceeding, in general) is maintainable, the Court ought to grant a limitation based upon the American principle or based upon a different principle; which, of course, the Circuit Court of Appeals could not have intended.

PROPER ANSWERS TO THE CERTIFIED QUESTIONS.

The answer to the first certified question (viz., as to whether a limitation proceeding is maintainable in the absence of a showing concerning the status of the foreign law of the flag) depends evidently upon whether the law of the flag ought, on fundamental legal principles, to govern the rights and liabilities of the parties. For if these rights and liabilities are properly regulated by the *lex fori*, it is quite immaterial whether or not there is any showing as to the status of the law of the flag; the proceeding would be maintainable in either event, and the first certified question could be answered in the affirmative without further consideration.

If, however, it be correct to say that on principle the law of the flag ought to govern, the main question cannot be answered without ascertaining, in the second place, whether in the absence of some actual showing concerning the status of the law of the flag, that law must be taken by the Court as conferring or withholding any right of limitation. For if the law of the flag govern the case and be taken as charging ship-

owners with unlimited liability, the first certified question should be answered in the negative.

Again, assuming that the law of the flag must be taken as conferring a right of limitation, even then the answer to the main question must be deferred until it can be known whether the principle of limited liability which, in the absence of a showing, must be taken by the Court as expressing the law of the flag (1) is the same as that of the *lex fori* or of a nature sufficiently similar to that of the *lex fori* to enable the foreign law to be administered by the domestic courts consistently with their established methods of procedure and practice or (2) is of so different a nature that the methods and remedies consonant with the practice of the domestic courts are not competent to administer the foreign law.

When the first certified question has been thus analyzed, it will be seen to include within its scope the subject matter of the second and third certified questions. These questions do not, therefore, merit separate treatment.

The propositions of law upon which, as we have seen, the answer to the first certified question is resolvable are, we submit, as follows:

1. In respect of limitation of liability, the law, by which the rights and liabilities growing out of the disaster mentioned in the certificate ought to be governed is the law of the flag, that is, the British law.

2. In the absence of any showing as to what was the status of British law at the time of this disaster, that law must be taken as denying to ship-owners any limitation of liability and as obligating them to make reparation in full in respect of losses consequent upon their torts.

From these propositions it follows necessarily that *the first certified question must be answered in the negative*; since it cannot be successfully contended that a shipowner, without right of limitation (if in fault) may properly be permitted to conduct a similar affirmative proceeding to obtain a judicial exoneration from liability in derogation from the common right of each sufferer to resort to a forum of his own selection for his redress.

If we are right in the foregoing legal propositions, the second certified question (as to whether a limitation proceeding would be maintainable if it "appears" that the law of the flag conferred a right of limitation is founded upon a premise inconsistent with the facts as certified, and need not be answered. For as we know from the certificate the assumed fact that the foreign law confers a right of limitation, does not expressly appear in any pleading or proceeding in the cause and it cannot "appear" as an inference founded upon any legal presumption, if we are right in our foregoing contentions.

3. But even if a presumption *could* be indulged to the effect that the law of the flag confers a right, but a different right of limitation from the *lex fori*, still we assert that no limitation proceeding could properly be maintained in the courts of this country as against exceptions duly directed to the point, unless, by appropriate allegations in the petition for limitation, the substance of the foreign limitation law relied on, were made to "appear" to the Court (so as to enable such law to be applied by our courts if petitioner's allegations concerning the foreign law were admitted in the answer), nor unless such facts concerning the size

or value of the ship and the nature of the disaster as should then be seen to be essential to the proper application of the sort of limitation recognized by the law of the flag, were in like manner shown to the Court.

Therefore the second certified question may be properly answered in the negative.

The answer to the *third certified question* has been necessarily given in dealing with the answer to the first certified question.

The subject presented to this Court by the certificate is one of fundamental importance in the solution of questions growing out of the commerce of this country with foreign nations. The uncertainty introduced into the law by the unexplained decision of Judge Benedict in the case of *The State of Virginia*, 60 Fed., 1018, has been only partially removed by the later decision of *The Lamington*, 87 Fed., 752, and *The Eagle Point* (C. C. A.), 112 Fed., 453.

Where disasters at sea have involved one or more vessels of the same nationality and the law of the flag has been of such a character as to lead to the same financial result, in limited liability cases, as that to which the American Act of 1851 would lead, it has been usual for all parties to consent to the application of the American Act rather than make formal proof of the foreign law. But in cases where the application of the law of the flag would lead to a different financial result, the foreign law, has, we believe, invariably been pleaded by admiralty practitioners (including counsel for both parties before this Court, as, for instance, by Mr. Kirlin in the unreported case of *The Regulus*), whose clients would be benefitted thereby.

No decree in any such case (reported or unreported) based on the American Act has been, or, as we believe, can be found.

We shall devote ourselves in this brief to establishing successively the three propositions of law stated in the paragraphs *supra*, numbered, respectively 1, 2 and 3. For, as we have seen, the answers to the certified questions depend directly upon them.

FIRST POINT.

The law of the flag governs the Titanic disaster.

Under this point we shall show (1) that as a matter of fundamental principle, British law governs as the *lex loci delicti*, and (2), while conceding the power of Congress to prescribe a rule of limited liability to be applied by American courts to foreign ships beyond our territorial boundaries, that Congress has not done so.

I.

Upon fundamental principle, the British law as the *lex loci delicti*, fixes the limit of petitioner's liability.

Although the Titanic was a ship registered pursuant to British laws in a British port and the disaster, here in question, occurred on the high seas and involved no other vessel, the British corporation by which she was owned has taken no

proceedings for limitation of liability in the British Courts, but has crossed the ocean and sought the assistance of the American courts to that end.

The reason is not far to seek.

The limit of liability recognized by the American Act depends on the fate of the vessel; the British limit does not so depend. If the White Star Line can avoid the provisions of its own law and take advantage of those of the American law, the extraordinary result is brought about by reason of the Titanic having been totally lost in the disaster that the White Star Line will pay to sufferers in the aggregate *less than three per cent.* of the sum to which the British Act would limit its liability, were it entitled to any limitation under that law.

Through the sagacity of its legal advisers, the White Star Line has conceived, and is now attempting to carry out the plan of preventing sufferers from suing in England by using the injunctive powers of the American courts as against all persons who can be served actually or constructively with process owing to the jurisdiction of the American Courts over American citizens and persons within the national boundaries.

The claims filed in the District Court, after the granting of its injunction, to restrain actions elsewhere, were filed presumably in large measure because the claimants were effectually prevented from suing elsewhere. The total number of claims filed was 665, of which 388 were for loss of life, and the balance for personal injury and loss of property. Among these claims are those of the two appellees before this Court.

The actions instituted in the United States before the granting of this injunction represented claims of an infinitely small aggregate amount, relatively. There were only five of these actions, three for loss of life and two for personal injuries and loss of baggage (Certificate, fol. 10).

The attempt thus made by the White Star Line to avoid 97% of its English liabilities should fail, primarily because it is opposed by the universally recognized principle of international law which requires the application by the courts of all countries of the *lex loci delicti*.

The Titanic, as soon as she passed beyond territorial waters, became in legal contemplation a floating island of Great Britain whose flag she rightfully carried. The acts and transactions of the entire ship's company (passengers and crew) are as much governed by British law (assuming, as is here the fact, that they are not complicated by relations growing out of the proximity of some different vessel, carrying the flag of a different nation), as they would be if they happened within the actual territorial boundaries of the Kingdom of Great Britain.

A.

THE RULE THAT LIABILITY FOR A TORT ON LAND IS GOVERNED BY THE *LEX LOCI DELICTI* IS UNIVERSAL.

That this is true both of terrestrial and of maritime torts is the conclusion to which Judge Holt's careful study brought him (Opinion, Transcript of Record, fol. 113).

See

Kaiser Ferdinand Nordbahn, vs. M., 57
Reichsgericht, 142.

The principle that torts committed in a foreign country are governed by the laws of that country, and that those laws must in general be applied by the courts of a different country, to the exclusion of the legal principles recognized in the latter, is founded not so much upon the courtesy and respect which one nation owes to another, as it is founded on the advantage of *uniformity* in fixing the result of a particular transaction or occurrence, irrespective of where the litigation may arise.

If such a principle were not adopted in civilized countries, tort feorsors and debtors in matters of importance would be apt to remove to the country whose laws afforded them the best defense.

And, on the other hand, the only way for a right-minded debtor or tort feorsor to avoid subjecting himself to unjust burdens might be to refrain from making trips into any country whose legal principles were less favorable to a person in his position than those of the country where the transaction arose. An act lawful where done might be held a wrong elsewhere. If the courts of one State will not apply the *lex loci delicti* or the *lex loci contractus* aut *actus* (as the case may require) where differing from their own law, the devices and evasions of the unjust will be rewarded and the movements and activities of well-meaning citizens will be unwisely hampered; the courts of different countries, in giving to suitors the benefit of their powers, will often become involved in a

race to obtain jurisdiction over the parties or to enforce their decrees and judgments, and the administration of justice would thus be brought into contempt.

When once the rights and obligations of a particular transaction are fixed in accordance with the principles of reason, justice and conscience, it cannot be admitted that these rights and obligations are subject to being varied according to the place or country or time of their enforcement. Substantially this principle is attributed to Cicero by Mr. Justice Swayne.

Wilson vs. McNamee, 102 U. S., 572, 574.

There are countries (e. g. Germany) which by statute qualify the doctrine of *lex loci delicti* in the selfish interests of their own subjects and citizens in such manner as to deny to a foreigner, instituting proceedings in the local Courts against a subject citizen, the full benefit of the doctrine, where to do so would charge the subject or citizen with a greater liability than that which he would incur in a similar case primarily governed by the *lex fori*.

But this is an attempt to induce a court to engraft upon the doctrine of *lex loci delicti* an illogical exception designed not to help the citizen but to discriminate against the citizen *in favor of the foreigner*. In this respect, the present instance is believed to be unparalleled.

The qualification that foreign law will not be enforced in cases where the alleged wrong would not be actionable in the country where redress is sought has sometimes been recognized, as for instance by the English Privy Council in the case

of *The Halley*. But no such qualification obtains in the Federal courts, or prevails generally in this country.

Huntington vs. Attrill, 146 U. S., 657, 670, and cases there cited.

Herrick vs. Minn. & St. L. Ry., 31 Minn., 11.

Indeed, the only instance, according to the weight of the American authorities, in which the *lex loci delicti* will not be permitted to govern substantive rights and liabilities to the same extent as if the courts of the *locus delicti* had been invoked, is that in which the enforcement of the *lex loci delicti* would be contrary to the public policy of the State of the forum.

Northern Pacific Railroad vs. Babcock, 154 U. S., 190, 198.

The Brantford City, 29 Fed., 373, 395.

As regards the enforcement of the penal and criminal laws of a foreign country, the *curia fori* refuses, it is true, to give its co-operation, but it is not ordinarily called upon to apply a rule at variance with that of the *lex loci*.

Huntington vs. Attrill, 146 U. S., 657, 681.

To refer to but one of the countless cases recognizing the *lex loci delicti*, we may cite *Powell vs. Great Northern Railway*, 102 Minn., 448. The action was for death occurring in North Dakota from injuries resulting from a tort committed also in North Dakota. That State and also the State of Minnesota, where the action was brought, recog-

nized by their statutes rights of action for death. Under the *lex fori*, the tort feasons in death cases were entitled to a limitation of liability to \$5,000; whereas under the *lex loci delicti*, tort feasons in such cases were liable without any limit for compensatory damages. The Supreme Court of Minnesota, applying the *lex loci delicti*, denied to the defendant railway the benefit of any limitation of liability.

B.

IN MARITIME DISASTERS UPON THE HIGH SEAS, INVOLVING ONE FOREIGN VESSEL OR SEVERAL VESSELS OF THE SAME FOREIGN NATIONALITY, THE LAW OF THE COUNTRY TO WHICH THE VESSEL OF VESSELS BELONG, GOVERNS THE RIGHTS OF ALL PARTIES.

Where a tort is committed on the high seas and involves a single vessel, the law of the flag of that vessel governs the rights and liabilities of the parties just as conclusively as though the tort had been committed on land within the territorial jurisdiction of the country whose flag she flies. For a ship has long been regarded by the courts and by writers on international law as a floating island of the country to which she belongs.

The eminent French jurist Calvo says:

"Ships are regarded as floating portions of the territory of the nation to which they belong and whose flag they are authorized to fly. While they are upon the high seas, the jurisdiction of that nation extends over the entire ship; as a consequence, the crew and, comprehensively, everybody on board are re-

*garded as treading the soil of the vessels' nation."**

I Calvo Droit International (4th ed.)
552; (Book VI, sec. 3).

Among the numerous statements of the same principle by commentarians and text writers of Continental Europe, England and this country may be mentioned:

Bluntschli, §317;
Vattel I, c. 19, §216;
Rutherford II, c. 9, §§8, 19;
Kent I, page 26;
Wheaton, 8th ed., §106;
Wharton, Internat. Law, Dig. I, §26.

Wharton in his treatise on the Conflict of Laws states the rule as follows:

"A ship in the open sea is regarded by the law of nations as a part of the territory whose flag such ship carries * * * In respect to principle ships at sea *and the property in them*, must be viewed as a part of the country to which they belong."

Wharton, Conflict of Laws (3rd ed.),
§356.

These words have been quoted by this Court as a correct statement of the law in a case in which it was held that property rights in a Massachusetts vessel could be altered in accordance with the Massachusetts laws while the vessel was on the high seas, notwithstanding the fact that this resulted in abridging or defeating the rights of citizens of the State of New York, which would

*Italics in quoted passages, throughout this brief are ours, unless otherwise stated.

have been acquired under the laws of the State of New York, and were properly asserted by judicial process against the vessel in question in the port of New York, the first port to be reached by the vessel thereafter.

Crapo vs. Kelly, 16 Wall, 610, 625.

By one of the most accurate recent text-writers, the rule is stated as follows:

"In case of torts committed on the high seas, the tort must be regarded as committed in the territory of the state or country to which the vessel belongs. *The law of the flag is the lex loci delicti.*"

Minor, Conflict of Laws, §195.

This principle has received the fullest recognition by courts and commentators, by whom, indeed, the principle is frequently stated in language practically identical with that quoted above from Minor.

Dicey, Conflict of Laws, 2nd ed., §663.

Wharton, Conflict of Laws, §473.

Patterson vs. The Barque Eudora, 190 U. S., 169, 176.

The Hamilton, 207 U. S., 398, 405.

The Scotia, 14 Wall., 170, 184.

Crapo vs. Kelly, 16 Wall., 610, 624.

United States vs. Palmer, 3 Wheaton, 610, 631.

United States vs. Klintock, 5 Wheaton, 144.

Wilson vs. McNamee, 102 U. S., 572, 574.

Mr. Justice Field, in a case involving the Chinese Exclusion Act forbidding any Chinese laborer

to come into the United States after 4 August, 1882, gave the benefit of this doctrine to a Chinaman who was on board an American vessel at sea at the time when the Act went into force.

In re Ah Sing, 13 Fed., 286, 289.

In another case under the same Act, one Moncan, a Chinaman, who joined the American ship *Patricia* in London, 18 February, 1882, as cook, and who entered the territorial boundaries of the United States 14 October, 1882, was held entitled to remain here on the ground that while on the high seas on board the *Patricia*, he was within the United States within the meaning of the Act.

In re Moncan, 14 Fed., 44, 48.

So under the English authorities a birth occurring on board a ship at sea has the same legal consequences as if it occurred ashore in the country whose flag the ship flies.

Marshall vs. Murgatroyd, L. R. (1870), 6 Q. B., 31.

In *Wilson vs. McNamee*, 102 U. S., 572, 574, the laws of New York were deemed to follow a New York pilot boat beyond the territorial waters of New York with reference to the rights of the pilot's employment.

It has uniformly been held that causes of action for death at sea, due to collision or other cause, are governed by the law of the flag.

The Hamilton, 207 U. S., 398, 405.

La Bourgogne, 210 U. S., 95, 138; 139 Fed., 433, 438.

The E. B. Ward, 17 Fed., 456, 459.

McDonald vs. Mallory, 77 N. Y., 546.

Lindstrom vs. Int. Nav. Co., 117 Fed., 170;
123 Fed., 475.

Southern Pacific Co. vs. de Valle da Costa,
190 Fed., 689; 176 Fed., 843.

The Jane Gray, 95 Fed., 693.

Stewart vs. Balt. & O. R. R., 168 U. S.,
445.

In the *Lindstrom* case, *supra*, Judge Wallace, speaking for the Circuit Court of Appeals, says:

"The territorial sovereignty of a state extends to a vessel of the state when it is upon the high seas, the vessel being deemed a part of the territory of the state to which it belongs; and it follows that a state statute which creates a liability" (it might have been added, or fixes a limit of liability) "or authorizes a recovery for the consequences of a tortious act operates as efficiently upon a vessel of the state when the vessel is beyond its boundaries, as it does when it is physically within the state."

Lindstrom vs. Int. Nav. Co., 123 Fed., 475,
476.

In view of England's great maritime power, the floating island doctrine would naturally find favor with her courts. Of the many English cases that might be cited, it will suffice to refer to one; that of *Lloyd vs. Guibert*, L. R. 1 Q. B., 115, 127 (1865). In this case, a French ship chartered at a Danish port by a British subject for a voyage from Hayti to Liverpool, met with disaster at sea which necessitated the executing of a bottomry bond. The ship, on arrival at destination, was of less value than the amount of the bond. The French owner was successful in invoking in an English court his

French right of abandonment in limitation of his liability, although no such right of limitation existed under British law. The *ratio decidendi* sufficiently appears from the following passage:

“For the law of France, on the other hand, many practicable considerations may be suggested, and, first, the subject-matter of the contract, the employment of a sea-going vessel for a service, the greater and more onerous part of which was to be rendered upon the high seas, where, for all purposes of jurisdiction, criminal or civil, with respect to all persons, things, and transactions, on board, *she was, as it were, a floating island, over which France had as absolute, and for all purposes of peace as exclusive, a sovereignty as over her dominions by land and water, even whilst in a foreign port*—according to notions of jurisdiction adopted by this country (18 & 19 Vict. c. 91, s. 21; 24 & 25 Vict. c. 94, s. 9), and carried to a greater length abroad (Ortolan *Diplomatie de la Mer*, c. xiii, the work of a French naval officer, but of which a jurist might well be proud)—was never completely removed from French jurisdiction.”

The highest court of France has frequently expressed the same view. In *The Dio Adelphi*, a Greek ship of that name, was arrested in Marseilles under the process of the Civil Tribunal of the Seine and sold for the benefit of creditors. One Barbarosos, a mortgagee of the ship, under a mortgage executed at Hermopolis in Greece, asserted a preference as against the proceeds of sale. The Tribunal and, on appeal, the Cour d'Appel d'Aix, rejected the asserted preference in virtue of statu-

tory provisions denying the right of lien under the terms of foreign contracts on property in France. But the Cour de Cassation took a different view of the scope of Art. 2128 of the French Civil Code. The Court says of this provision of the code that it "cannot, therefore, be extended to foreign ships which are only accidentally in France and which a *legal fiction*, on which rests the security of the seas and of maritime commerce, treats as being an integral part of the country whose flag they carry." * * *

The Dio Adelphi, decided 25 Nov., 1879,
91 Journal du Palais (Court House
Journal) for 1880, p. 603 at p. 609.

The most numerous, and at the same time the most puzzling class of cases in which the courts are called upon to determine what law governs as the *lex loci delicti* is that of ships colliding on the high seas.

Where the colliding vessels are of the same nationality or where they belong to different nations whose laws, applicable to the disaster, are the same, all the authorities are agreed that, irrespective of the nationality either of the persons on board the vessels or of the owners of property on board the vessels or of the parties litigant, the law of the flag must, on principle, govern the rights and liabilities and the limitations of the liabilities of all persons, growing out of the disaster.

5 Desjardins, Dr. Comm. Marit, 118.

The Amalia, 1 Moore, P. C. N. S. 471, 482.

The only exception to this statement which a laborious study of the judicial decisions and the works of text writers and commentators of many

countries has disclosed is a dictum by Vice-Chancellor Wood in delivering his judgment in *Cope vs. Doherty*, 4 Kay & Johns., 367, a limitation proceeding, involving a collision in 1857 at sea between two American vessels. The Vice-Chancellor, having sustained a demurrer to the bill for limitation because no American Limited Liability Act had been pleaded, gave leave to amend, and in so doing, he intimated that if it should turn out that the damaged cargo was owned by British subjects, a foreign limited liability act would not be effective in preventing their being awarded full damages in a British court.

This isolated and illogical instance of reluctance to apply to its full extent the doctrine of the law of the flag may to some extent be explained (although not justified) by the fact that on the point referred to, the law of the flag would conflict with the principles of natural justice (restitutio in integrum) and at the same time with the selfish interest of subjects of the country of the forum. Such a rule would not help the White Star Line here. Clearly the Vice Chancellor would not have permitted the foreign ship owner to enjoy in his court a rule of limitation more favorable to the foreigner, less favorable to British subjects and more widely removed from principles of natural justice than the rule recognized by the law of the flag. Yet this is in effect the sort of advantage which the White Star Line is now trying to obtain over its adversaries, the latter being Americans, British and subjects or citizens of other nations.

THE UNDERLYING PRINCIPLE, AS EXPRESSED IN THE RULE FOR SOLVING THE PROBLEM OF COLLISION BETWEEN SHIPS OF DIFFERENT NATIONS. VIEWS OF THE HIGHEST COURTS OF THE LEADING COMMERCIAL NATIONS.

Where, however, a collision occurs on the high seas between vessels of different nations whose laws are in conflict with each other, very divergent views have been expressed as to the proper solution. Only two theories, however, are well supported on principle and by authority, viz.:

- (1) That the rights and liabilities (including limitation of liability) must be governed by the law of the flag of the vessel that was in fault in respect of the collision ("*Navire abordeur*") and
- (2) That they must be governed by the *lex fori*.

The former theory was adopted, subject to a slight qualification, by the 1885 International Congress of Antwerp (1885 Chnet, *Droit International Privé*, 593, 604) and has been applied by the French courts. This Court adopted the latter theory in the case of *The Scotland*, 105 U. S., 24, 30. The German courts apply a composite system in which both theories are included.

The French view.

The question was first passed upon by the highest French courts in the case of *The Apollo*.

The case just mentioned involved a collision between the British steamer *Apollo*, a vessel of 1238

gross tons (Record of American and Foreign Shipping), and the French steamer, *Le Precurseur* on the high seas off Brest resulting in the sinking and total loss of the *Apollo* and in serious injuries to the *Precurseur* and her cargo, the latter owned by Germans as well as by Frenchmen. The *Apollo* was held solely in fault. The losses sustained by the *Precurseur* and her cargo amounted to 483,531 fr. (1903 *Clunet*, *Droit International Privé* 136, 143) or about £19,200. Under the French principle of limitation of liability by abandonment, the limit of the British shipowners' liability would be *nil*. The British limit of liability, at about £8 per gross register ton, would amount to materially less than the total losses inflicted by the *Apollo*.

In this situation, Mess. Wilson Son & Co., owners of the *Apollo*, upon being sued in the *Tribunal de Commerce de Brest*, made a technical abandonment in proper form under the French law and sought to establish a virtual exoneration from liability based thereon. They did not plead the substance of the British Act of Limited Liability; they were held, on this account, not entitled to its benefits (*Opinion of Conseiller rapporteur Rousselier*, the member of the court especially intrusted with the consideration of the cause; 1892 *Clunet*, *Dr. Int. Privé*, 154, 159). They were afterward denied the right of limitation of liability under the French law by the *Tribunal at Brest*, by the *Court of Appeal at Rennes* and by the *Cour de Cassation at Paris* and were held liable for all damages in full. Their points in support of their right to the benefit of the *lex fori*: (1) that Art. 216 of the *Code de Commerce* was, by its language,

of general application; (2) that the *lex fori* must be applied as being in that case the law of the flag of the *Precurseur* which vessel, having received the injury (*le navire abordé*) must be regarded as the *locus delicti* and (3) that the *lex fori* was a mere expression of the general law maritime or of the *jus gentium*; were each overruled by the several French courts.

In the formal decision of the Tribunal at Brest, the Court says:

"In view of the frequency of conflicts of law in private maritime cases, there is in the courts of all nations, called upon to determine the same, a greater and greater tendency to consider the ship as a thing essentially national required, like persons, to submit to the law of the country of origin; that in the absence of a maritime law common to both countries, this method of determination of conflicts presents itself as a necessity when there is considered the custom, which is becoming more and more general, of touching at ports of call in different foreign lands, of chartering for a destination unknown and which must always remain so until the end of the voyage, and therefore the impossibility for the captain to keep himself informed concerning all the systems of legislation of the countries he visits and to follow the often conflicting requirements of each of them; moreover that while the application of the law of the flag may afford room for argument in the case where a ship is in the territory of a foreign nation, it is universally conceded that the law

of the flag alone is applicable when said ship is on the high seas, that is to say, outside of all national territory, the ship then recognizing but one law, that of the nation of the flag which she flies and which protects her."

An appeal was prosecuted to the Court of Appeal of Rennes. Said judgment, on December 21, 1887, was affirmed on the opinion below, given in full in the report. See 99 Journal du Palais, for 1888, at pages 194-198.

1888 Clunet, Dr. Int. Privé, 80, 83.

In a note to this case, Clunet says that in this decision, the Rennes Court adopted the system proposed by the Maritime Congress of Antwerp as regards the measure of liability of the master and owner of a ship guilty of fault causing a collision (1888 Clunet, Dr. Int. Privé, 80, 83).

In the subsequent decision of the Cour de Cassation, affirming the decisions of the two lower Courts, it was said that the limit of liability of the owners of the Apollo must be governed by British law because it is the latter which defines the incidents growing out of the relation of principal and agent between the shipowner and master and which must measure the authority of the shipmaster to bind the owners. This seems to be nothing more than saying the case is governed by the law of the flag of the offending ship.

Lyon-Caen's "Studies" in 1882 Clunet, Dr. Int. Privé, 241, 258, 259.

The Cour de Cassation uses the following language in making its decision:

“Considering that the action brought by Guignoy and Tandonnet for damages for the loss resulting from the tortious running down on the high sea of their vessel *Precurseur* by the vessel *Apollo*, both as against Hendrik and Wilson, Son & Co., the captain and owners of the *Apollo*, has as its very first ground a wrongful act or tort imputable to the first of the defendants, as was adjudged by the decree of the Court of Rennes rendered 29, January 1884, which has since become *res judicata*, it is none the less certain that the principle of liability which may attach to Wilson, Son & Co. is derived exclusively from the power conferred by them on their captain; considering that the determination of the present suit is governed, so far as they are concerned, by the existence of the master’s authority to bind them and by the legal consequences of such authority, which necessarily must be sought in that law within the scope of which said contract was made and which alone can serve to determine its bearing and its effects; considering that upon this ground, the decree appealed from sufficiently justifies the refusal to allow them to exercise the right of abandonment set forth in Article 216 of the (French) Code of Commerce, by pointing out that it was at Hull, an English port, that the authority, in consequence of which they made themselves liable towards third parties for the acts of Hendrik, had been conferred by the plaintiffs in error; considering on the contrary, that it was sound law for the decree appealed from to hold that the English law was the only law whose provisions

Wilson, Son & Co. might invoke for the determination of the litigation; considering that in the premises it was unnecessary to determine either what might here have been the effect of the application of the principles of general law maritime (to which there could be no occasion to resort except in default of a municipal law applicable) or on the other hand, whether, in the absence of a statute expressly governing their liability in a situation of this kind, Wilson, Son & Co. could in any event be permitted to avoid the obligation with which they are burdened by the law of their own flag and to claim, for the determination of the extent of their liability, more ample protection than that furnished to them by their (personal) national status; considering that there is no occasion to determine likewise the claim of Wilson, Son & Co. that the French law became in any case alone applicable to the suit, either as being *lex fori*, or by virtue of a quasi contract, existing between their opponents and themselves, founded upon their choice of the forum; considering on the one hand, that the ascertainment of the law to be applied to the determination of a suit between parties belonging to different nationalities does not depend necessarily and in all cases on the jurisdiction in which the suit is brought; and considering on the other hand, that the rights of the parties might, in the abstract, have been varied by such a quasi contract with reference to the choice of a forum, yet that no contract of that nature exists in the premises (the exercise of the right granted to the original plaintiffs by Article

14th of the Civil Code not implying by itself, in any way, any such consequences, and the defendant not having done any more in answering such summons as was served upon him than to accept the position to which he had been subjected by the French courts, a jurisdiction from which he could not legally escape); hence it follows that in making the decision that was made, the decree appealed from did not violate any of the valid provisions of law relied on in the prayer for review,—wherefore the Court denies the prayer to reverse."

The Apollo, Decision 4 Nov. 1891 of the Cour de Cassation, 103 Journal du Palais (Court House Journal) for 1892, Part I, page 69; 1892 Clunet, Dr. Int. Privé 153, 181.

In a subsequent action, instituted by a German owner of cargo on the *Precurseur* against the owners of the *Apollo*, the right of the former to compensation in full was recognized by the French Courts. In an address of Avocat Général Martin before the Court of Appeal at Rennes, which was accepted by the Court as the basis of its decision of this cargo action, the previous decision of the Cour de Cassation was explained as founded upon the doctrine that in case of collision on the high seas between vessels of different nationalities, the limit of liability of the owner of the vessel whose fault caused the collision, ought to be governed by the law of the country where the vessel was commissioned (i. e., where the home port was situated).

The Apollo; 1903 Clunet, Dr. Int. Privé,
136, 154.

The same view of the state of French law is reflected in the opinion of conseiller rapporteur Judge Letellier, a member of the Cour de Cassation in connection with the decision of that Court in the case of *The Stokesley* (1905 Darras, Dr. Int. Privé, 114, 125).

The Court in that case refused to permit the British law of limited liability to be applied to a collision between two British vessels occurring in French territorial waters and held that the French law alone governed the case.

The German view.

The German decisions are interesting.

The case of *The Kong Inge* (S. R. M. vs. J. C. B. u. Genossen) 49 Reichsgericht 182, Decision of 18 Nov. 1901, presented to the highest Court in Germany the question as to what law the German courts ought to apply in measuring the rights and liabilities growing out of a fog collision at sea between the Danish schooner H. A. Friis and the Norwegian steamer Kong Inge. The schooner, with her cargo, was sunk in consequence of the collision; whereas the steamer was not harmed. The question in the case was as to the legal effect of a collision by mutual fault. On this point, the German law had been altered by statute after the collision, but before suit was brought. The Landgericht of Hamburg applied the German law as of the date of the collision and dismissed the action brought by the schooner,

The Oberlandesgericht, on appeal, applied the foreign law (that of Denmark and Norway being similar). Upon a further appeal to the Imperial Court, the latter said:

"The Court (Oberlandesgericht) applied the Norwegian-Danish maritime law, which, in case of mutual fault, prescribes that the Court shall fix and order the amount to be paid by each side as damages, with reference to the degree of the fault committed by each. * * * The appellate court (Oberlandesgericht) thereupon, assuming that there was no material difference in the degree of fault on both sides, adjudged the defendant liable to pay half of the damages to ship and freight sustained by the schooner H. A. Friis. The appellate court believes that it would have come to the same result if the German law prevailing at the forum were to be applied, because the Court assumes that, inasmuch as the Court of Hamburg did not obtain jurisdiction until April, 1900, by the filing of the libel, the new German law, which coincides with the Norwegian-Danish law, must be applied.

"The appeal was based on the contention that the appellate court erred in deciding the question of liability for the fault according to the Norwegian-Danish law, instead of according to the German law, and the appellant further sought to show that only such German law should be deemed applicable, as prevailed at the time of the collision. * * *

"With reference to the question of what law is to be applied, the appellate court reasons that in the case of

collisions of ships on the high seas, the law of the place of the act does not come into consideration, but that it is only to be decided whether the law of the flag or the law of the forum must be applied. *The Court deems it most equitable to apply the law of the flag against the owner of a ship for the acts committed by him with his ship*, because the ship owner always remains subject to the law of the home port and it holds that in the case at bar, the application of the law of the flag is to be applied with even less hesitation, inasmuch as the home laws of both ships,—the Norwegian and the Danish maritime law,—are in full accord with respect to damage claims growing out of the collisions of ships, so that neither of the two parties is prejudiced by the application of this law. The appellate court goes on to say that the application of foreign law is to be denied by the domestic judge, and the application of the domestic law (*lex fori*) resorted to, only when this latter law is of an absolutely compulsory nature, or when the provisions of the foreign law are not capable of being enforced according to domestic principles of law, or are *contra bonos mores*, or against public policy, or must be considered as opposed to the scope of a German law. As none of those cases exist in the case at hand, the application of the Norwegian-Danish law is justified.

“The reasoning must be followed.

“The appellate court assumes correctly that its decision does not stand in conflict with the

law as stated by the Reichsgericht. It is true that in the decision of the Reichsgericht of July 12, 1886 (Vol. 19, page 6) the following sentence is found:

'The provisions of German law about the conditions precedent and the extent of the responsibility of a ship owner for damages by collision have, therefore, for German Courts, a compulsory character, so that they (the German Courts) may recognize the liability of the ship owner only in so far as the laws of his own country provide by statute' (page 12).

"This sentence might create the impression that the Reichsgericht, in adhering to the older doctrine (compare Wagner Handbuch des See Rechts, Part I, page 142), considered German law generally decisive for German Courts in all legal controversies about claims arising from collision of ships; but the reasoning, on which the decision is based, shows that this sentence has a materially limited meaning. In the case decided, there the question was as to the liability of a German ship owner when his ship was under the control of a compulsory pilot and collided in a foreign port with a foreign ship. The Court found that he was not liable, although the law of the place of the act made the ship owner responsible even for the fault of a compulsory pilot. It was reasoned that inasmuch as, according to German law, the fault of a compulsory pilot did not create any liability for damages on the part of the ship owner, German judges could not possibly be permitted to apply a foreign law, which in

this respect was more unfavorable to the ship owner, so as to impose upon a German ship-owner a liability which the law of his own country denied on principle.

"The above quoted sentence is therefore to be understood as limited in its application to a German shipowner. The remark appearing in the same decision in another place—that the application of the law of the forum is justified even when both ships belong to a foreign flag—is only a dictum and of no importance to the decision. On the other hand, in the decision of May 30, 1888 (Decisions of the Reichsgericht in civil cases, Vol. 21, page 36), it is stated that in the case of a collision of ships in German territory, German law is controlling upon the German courts with respect to the liability of the ship owners concerned, even when both ships are foreign, because it is to be considered as the intention of the German law that the legal consequences of all collisions occurring under German territorial sovereignty are always to be decided according to the principles of German law, without reference to the nationality of the ships. * * *

"These decisions leave undecided the case where the collision occurs on the high seas between foreign ships, where the sovereignty of the German law does not come into question.

* * * In such a case, every intrinsic reason for the application of the German law is lacking. Nevertheless the Reichsgericht has held in a recent decision of November 10, 1900 (in *Sachen K. & B. vs. M.*, Rep. I, 246 '00), that even in such a case, the German law is ap-

plicable, referring to the reasoning of the above mentioned decision of May 30, 1888, R. G., Vol. 21, page 136. In the last named decision detailed reference is made to the confusion and the inconsistencies which must result, if (and particularly in case of mutual claims for damages), the ship owner of either of the colliding ships is to be governed by the law of his country, which may be different in many respects from the law of his opponent's country. This confusion and these difficulties are avoided, if the German court applies its own law, which is nearest at hand, and subordinates foreign laws, which differ from each other, and which easily lead to results unjust to the persons concerned. The application of the German law in such case is for extrinsic reasons, a convenient expedient, to which the law has deemed it necessary to resort on account of the obstacles incident to the application of the foreign laws. Comp. vs. Bar, 2 ed. Vol. 2, page 211, and the decision referred to in Reichsgericht, Vol. 21, page 142, of the Oberappellationsgericht at Lubeck, decisions in Bremer Rechtsachea, Vol. 2, Part 2, page 8 and decision of the Obertribunal in Berlin in Sueffert's Archiv, Vol. 14, page 335. A case of this kind was involved in the decision of November 10, 1900, which was based on a collision between an English and a Norwegian ship in the North Sea.

"In the case before us, however, there is no need of such an expedient. *If the ships colliding on the high seas belong to the same na-*

tionality, or are subject to the same laws, in spite of different nationality, the extrinsic reason for the application of the lex fori, which arises from the incompatibility of the law of the flag, fails. All the more, the liability of the ship owners is to be determined by their common municipal law, which the ships carry with them on the high seas, when such law does not go contrary to public policy of the country of the forum. As the Norwegian and the Danish Maritime law, with the exception of a few differences, are completely in accord with respect to the liability of the ship owner arising from his ship colliding with another ship, the appellate court was justified in basing its decision on the provisions of the aforesaid laws, for it cannot be assumed that the German law forbids the application of these provisions which decree division of liability, in the case of mutual negligence, measured by the respective fault of both parties. For (as the appellate court justly remarks) in view of the fact that the new Commercial German Code in Section 735 has made provision for the case of mutual negligence, which in their contents agree with those of the Norwegian-Danish Maritime law.

The appeal, therefore, must be dismissed without the necessity of considering at all the question of whether the German law would give the same result in case the new and not the old commercial code were applied."

The doctrine of *The Kong Inge* was reaffirmed by the Imperial Court in the case of *The Sreca and*

The Scine (74 Reichsgericht 46, Decision of 6 July, 1910) in which the Court said :

"After some uncertainty, the German courts have acknowledged the fundamental proposition by the decision of Reichsgericht in the case of the *Kong Inge* (Decisions of the Reichsgericht in Civil Cases, Vol. 49, page 182) that with reference to collisions on the high seas, as a matter of principle, the law of the flag of the vessel that is in fault (or the vessel alleged to be in fault) is to be applied. This rule is one that accords with the nature of the case, and, moreover, it is upheld by a preponderance of the legal writers and by the suggestions of the international congresses (compare the authorities stated in Boynes, *Maritime Law*, Vol. 1, page 67, et seq., and Schaps, Sec. 485, note 14, Sec. 734, Note 15). The *lex fori* is to be applied instead of the law of the flag only in a case where by reason of the peculiar nature of the facts, the application of the latter is impossible, or would result in an unequal treatment of the parties. This is the case particularly, where, in case of collision between ships of different nationality and different laws, the several ship owners in question, make claims against each other."

The English View.

The solution which the English courts have adopted, in respect of collisions between ships of different nations, depends upon a conception of sanctity inherent in the "general maritime law,"

which is extraordinary to say the least. According to eminent English authorities, positive municipal laws and regulations must, in this class of cases, yield to the general maritime law, even if the collision in question occur in the territorial waters of the country of the forum;

The Zollverein, Swabey, 96.

The Saronia, Lush Adm., 410.

The Nostra Signora de los Dolores, 1 Dobson, 290.

The Wild Ranger, Lush, 553.

The Leon, 6 P. D., 148.

unless the intention of the law—giving authority that the municipal law shall displace the general maritime law is expressed with unmistakable clearness.

The Amalia, 1 Moore P. C., N. S., 471.

This conception of the British courts has met with little approval even from British scholars. It is, for instance, strongly discountenanced by Professor Westlake, who seems to favor the rule that torts at sea are governed by the law of the flag of the delinquent vessel, although he does not give separate attention to the case of collision between ships of different nations. He says:

“But the owners of the delinquent ship cannot plead a limitation of liability to the value of the ship and freight which is accorded by the law of the plaintiff’s flag, but not by that of their own flag.”

Westlake, *Private International Law* (5th Ed.), §§202, 202a, pages 288-291.

The English conception of the general law maritime is thoroughly discredited in this country,

where a greater degree of confidence in the justice and wisdom of statutory enactments seems to be indulged.

The Scotland, 105 U. S., 24, 32.

The Lottawanna, 21 Wall., 558, 572.

The English doctrine would afford no support to the contentions of the White Star Line. For the limited liability principle never was a part of the general maritime law

The Volant, 1 W. Rob., 383, 387.

The Alene, 1 W. Rob., 111, 117,

and has not acquired, for the United States, the force of the general maritime law since the Act of 1851 was adopted.

The Scotland, 105 U. S., 24, 29.

La Bourgogne, 210 U. S., 95, 116.

The American View.

The rule which this Court adopted in *The Scotland*, *supra*, applying the *lex fori* to cases of collision between vessels of different nations has many adherents in continental Europe; although as already seen, it has not found acceptance in the highest courts of France, whereas in Germany the Imperial Court has adopted it only in a modified form.

Before the decision in the case of *The Apollo*, one of the most eminent of the French commentators wrote:

“Since actions for collision may be brought before French tribunals between French litigants or between French and foreign litigants or even wholly between foreign litigants, we must face the question, what is the law to be

applied according to the circumstances of the case?

"No difficulty can arise in case of collision through inevitable accident or in case of collision through the sole fault of one vessel, the consequences being, in each case, merely an application of the general maritime law recognized by all nations. But it is otherwise (1) in case of collision through inscrutable fault, and (2) in case of fault on the part of both vessels. We have already seen that in case of inscrutable fault, Article 407 (French Code of Commerce) divides the damages, whereas in many other countries, *e. g.*, Germany and England, each party bears his own damages without recourse against the other. We have also seen that in case of mutual fault our law divides the responsibility in proportion to the degrees of fault respectively, whereas in this case, in England the damages are equally divided; in Germany and in Italy, on the other hand, each party merely bears his own damages as in case of inevitable accident. Which should be the rule in the French courts?

"If the suit in France relates to a collision between two foreign ships of the same nationality, there being no French principle at stake, I think that in strictness, *the judge must be controlled by the foreign law of the nation to which the ship belongs.* But the French law alone seems to me applicable when the contest is between foreign ships of different nationality and *a fortiori*, between French and foreign ships, wherever the collision may have happened."

Valroger, Droit Maritime, §2124.

We assert with the greatest confidence that the principle stated by Valroger is the law of this country unless, in answering the pending questions, this Court see fit to modify the ruling in *The Scotland*, 105 U. S., 24.

D.

THE SCOTLAND DECISION CONSIDERED.

In *The Scotland*, a British vessel of that name, collided with, and sank the American ship *Kate Dyer*, opposite Fire Island, just outside the territorial waters of the State of New York. Actions in personam against her owner were brought by the owners of the *Dyer*, by one Henry B. Hollins, a passenger on the *Dyer*, by various members of her crew and by the Republic of Peru, to recover damages for the sinking of the *Dyer* and for the loss of cargo and personal effects. No direct statement appears in any of the decisions as to the nationality of these individual libellants and the matter was evidently regarded of no importance.

The *Scotland* being held solely in fault, the question arose whether her owner was entitled to the benefit of the Limitation Act of 1851 or of an equivalent principle of the general maritime law.

After denying the existence of any such principle of the general maritime law (105 U. S., 24, at pages 28, 29), Mr. Justice Bradley says in effect that the respondents' asserted right to the benefit of the Act of 1851 must depend upon the application to the case of the principles of *lex loci delicti* and analogous principles (at page 29, middle). "In administering justice between parties" says Mr.

Justice Bradley, "it is essential to know by what law or code or system of laws their mutual rights are to be determined. When they arise in a particular country or state, they are generally to be determined by the laws of that state" (at page 29). Then he refers to collisions of three sorts (1) those in foreign territorial waters, (2) those at sea between vessels of different nations, and (3) those at sea between vessels of the same foreign nation.

Of the second class, Mr. Justice Bradley says:

"If a collision occurs on the high seas, where the law of no particular state has exclusive force, but all are equal, any forum called upon to settle the rights of the parties would *prima facie* determine them by its own law as presumptively expressing the rules of justice. * * * If they (the contesting vessels) belonged to different nations having different laws, since it would be unjust to apply the laws of either to the exclusion of the other, the law of the forum, that is, the maritime law as received and practised therein, would properly furnish the rule of decision" (at pages 29, 30).

Of the third class, he says:

"But if the contesting vessels belonged to the same foreign nation, the Court would assume that they were subject to the law of their nation carried under their common flag and would determine the controversy accordingly" (at pages 29, 30).

After referring to the language and general purpose of the Act, the Judge remarks that the

limited liability principle has become our maritime rule for the administration of justice in maritime cases (at page 31), referring evidently to what he has previously called "the maritime law as received and practised therein" (*supra*). He then says: "We see no reason, *in the absence of any different law governing the case*, why it "should not be applied to foreign ships as well as "to our own, whenever the parties choose to resort "to our courts for redress" (at 31), and later: "And "public policy, in our view, requires that the rules "of the maritime law as accepted by the United "States should apply to all alike, *as far as it can properly be done*" (at page 33). But he has previously pointed out that there was a "different law" from that of the forum governing the case, in the event of the colliding vessels carrying a common flag, and that the maritime law as accepted by the United States did not then properly apply (at pages 2^d, 30).

Immediately after the last passage quoted *supra*, Mr. Justice Bradley continues:

"If there are any specific provisions of our law which cannot be applied to foreigners or to foreign ships, they are not such as interfere with the operation of the general rule of limited responsibility" (at page 33).

He is still referring to a case where the *lex fori* may *properly* be applied to collisions involving foreign ships and not to collisions between vessels carrying a common flag. The Judge in referring to specific provisions that could not be applied to foreign ships, probably had in mind a contingency which has not thus far actually arisen here, but

which has arisen in connection with the British Act. This Act now applies in express terms to foreign ships.

The Cathay (1900), 82 L. T., 823; 9 Asp. M. C., 100.

Abbott Merchant Ships (14th Ed.), page 1052.

Appellant still contends that *The Scotland* is authority for the proposition that the American Act of 1851 confers a right of limitation of liability upon foreign ships in every instance of disaster at sea. What seems to us indisputably clear from a perusal of its language, however, is that it is authority for the proposition that foreign ships are entitled to the benefit of the Act in cases in which, on the fundamental principles of private international law, the *lex fori* governs their rights, viz., in cases of collision at sea between vessels of different nationality; and then, not because Congress has specially dealt with this class of foreign vessels in the Act, but because the principle of limited liability expresses our "rule of justice" (at page 29) and may therefore be applied "in the absence of any different law governing the case" (at page 31).

This Court in *The Scotland* disapproved of the construction of a former English Limitation Act by the English courts, under which construction, a foreign ship, in respect of a collision at sea, could in no instance have the benefit of a limitation of liability. A stronger case for the application of the British Act to an American vessel could scarcely be imagined than in the case of *The Wild Ranger*, Lush. Adm., 553. The collision occurred at sea between a British and an American ship at a time

when the American Act and the British Act were practically identical. Nevertheless the right of limitation was denied.

But in expressing this disapproval, and in conferring the benefit of the American Act upon a foreign vessel *in certain instances*, Mr. Justice Bradley has been very careful not to indicate an intention of going to the opposite extreme, that of conferring the right of limitation upon foreign vessels *in all instances*.

Appellant argues primarily that under *The Scotland*, every foreign vessel is entitled to the benefit of the American Act in respect of a collision at sea; but if this argument should seem ill founded, appellant then relies on the contention that the only collisions at sea which are governed by the law of the flag are those in which not only do all the ships involved carry a common flag but in which, also, (1) the owners of the vessels are carrying on a contest in the courts against each other, or (2) all the parties litigant are of the same nationality.

If *La Bourgogne* and the *Cromartyshire* (*La Bourgogne*, 210 U. S., 95) had carried a common flag, so that the law of the flag might have applied to them and to other parties litigant, the argument is that the law of the flag would at once become inapplicable, as soon as the contest between these vessels terminated (as it did at an early stage), and that subsequent phases of the litigation would be governed by the *lex fori*. Most absurd consequences may readily be suggested, if the law applicable to a collision case could be altered through the entrance into it of some in-

significant new party litigant of different nationality from the others.

The readiest reply to appellant's argument is that Mr. Justice Blatchford, who concurred in *The Scotland*, has explained the scope of the decision of the Court in a manner wholly at variance with all of appellant's contentions.

Thommascn vs. Whitwill, 12 Fed., 894, 895, 896, (1) and (4).

Appellant's contentions are at variance with sound principle.

E.

DIVERSITY OF CITIZENSHIP OF PARTIES LITIGANT IS NOT A FACTOR OF LEGAL SIGNIFICANCE.

If the controversy were one of which the Court might assume or decline jurisdiction in its discretion, the nationality of the parties litigant might be a material factor.

Neptune Nar. Co. vs. Timber Co., 37 Fed., 159.

The Russia, 3 Ben., 471.

Elder Dempster Shipping Co. vs. Poupirt, 125 Fed., 732, 735.

But when once the Court has assumed jurisdiction it should mete out justice with an even hand, regardless of race, nationality, politics or religion. And if the transaction has happened beyond our territorial jurisdiction, the Court should give litigants the benefit of the *lex loci* of the occurrence.

Mulhall vs. Fallon, 176 Mass., 266.

Smith vs. Condry, 1 Howard, 28.

Commell vs. Sewell, 5 Hurl. & Norm., 728.

"Why should it ever be held that what is a wrong when done to an American citizen, is right if the injured party be an Englishman?"

The Scotia, 14 Wall., 170, 185.

In *The Lamington*, 87 Fed., 752, the parties litigant were Norwegian and British, respectively; in *The Eagle Point*, 136 Fed., 1010, 142 Fed., 453; 201 U. S., 644, they were American and British, respectively; in *The Hamilton*, 207 U. S., 398, 405, the shipowners were Delaware corporations and the claimants were citizens of many other States; in *Lindstrom vs. Int. Nav. Co.*, 117 Fed., 170, 123 Fed., 475, the parties litigant were Europeans and a New Jersey corporation, respectively; in *Southern Pacif. Co. vs. De Valle da Costa*, 190 Fed., 689, 176 Fed., 843, the parties litigant were a subject of Portugal and a Kentucky corporation. In all of these cases, the tort was committed on the high seas and the *lex fori* differed from the law of the ship's flag. In each case, the latter was applied as the *lex loci delicti*.

In using the word "*parties*" in several passages of *The Scotland* decision, Mr. Justice Bradley was probably referring not to parties to the litigation, but to parties or actors in the collision, *i. e.*, ships. It is not unusual in the law maritime to refer to ships as persons or parties.

Tucker vs. Alexandroff, 183 U. S., 424, 438.

Ralli vs. Troop, 157 U. S., 386, 403.

The John G. Stevens, 170 U. S., 113, 120,
and many other cases.

The doctrine in *The Scotland* has invariably been regarded by this and other courts in connection with the decision of subsequent cases, as declaring the law of the flag to be the *lex loci delicti* where the maritime disaster involved a ship or ships of the same nation (as actors or parties in the collision or disaster) or as applying the *lex fori* as a rule of justice where the disaster involved ships whose nations recognized different laws.

Northern Pacif. R. vs. Babcock, 154 U. S., 190, 198, is an instance of the former sort. The Court there sustained a \$10,000 verdict in a death case, although the *lex fori*, if applied, would have limited the recovery to \$5,000. Chief Justice White quotes at length from *Herrick vs. Minneapolis & St. L. Ry.*, 31 Minn., 11 as to the binding force of the *lex loci delicti* and cites *Texas & P. Ry. vs. Cor.*, 145 U. S., 593, to the effect that death statutes are not to be deemed penal in their nature. Immediately afterward in support of the assertion that "the rule thus enunciated had been adopted in previous cases" (referring evidently to the *Herrick* decision) "and has since been approved by this Court," Mr. Justice White cites *inter alia Smith vs. Condry*, 1 How., 28, and *The Scotland*, 105 U. S., 24, 29.

Few cases have been cited more often than *The Scotland*, but not a single subsequent case refers to the decision as authority for the proposition that diversity of nationality of parties litigant is a ma-

terial factor in determining what laws to apply. Nearly all of them refer to *The Scotland* as authority for the same proposition which Mr. Justice White, in deciding the Babcock case, *supra*, understood it to support. Among them may be mentioned:

Huntington vs. Attrill, 146 U. S., 657, 670.

La Bourgogne, 210 U. S., 95, 115.

Cuba R. Co. vs. Crosby 222 U. S., 473, 478.

The Brantford City, 29 Fed., 373, 384.

Northern Pacific R. vs. Mase, 63 Fed., 114, 116.

Mr. Justice Bradley himself cites *The Scotland* as authority for the proposition that "if the maritime law, as administered by both nations to which the respective *ships* belong, be the same both in respect of any matter of liability or obligation, such law, if shown to the Court, should be followed in that matter in respect to which they so agree."

The Belgenland, 114 U. S., 355, 370.

No decision has been cited or can, we believe, be cited, in which the question whether an American statute or law governs or does not govern a particular transaction has been made to depend upon the citizenship of the parties litigant. We except, of course, from our statement the law of marriage and divorce which is *sui generis*.

That citizenship of the parties is immaterial has been held with reference to a statute (that relating to piracy) whose language, descriptive of the

persons and things coming within its purview, strikingly resembles that of the Limitation Act.

United States vs. Holmes, 5 Wheaton, 412, 417,

Says this Court:

"It makes no difference whether the offender be a citizen of the United States or not. If it (the offense) be committed on board of a foreign vessel by a citizen of the United States or on board of a vessel of the United States by a foreigner, the offender is to be considered *pro hac vice* and in respect of this subject, as belonging to the nation under whose flag he sails."

F.

A SINGLE-SHIP DISASTER INVOLVES THE SAME PRINCIPLE AS A COLLISION BETWEEN TWO SHIPS OF THE SAME NATION.

Granting, then, that the law of the flag governs a collision at sea between two ships of the same nation, whatever may be the nationality of the parties litigant, it follows necessarily that the law of the flag governs a disaster involving only a single ship. In such a case, the right to apply the law of the flag of that vessel should be clearer, if anything, than where two vessels of the same nationality are involved.

In *The Lamington*, 87 Fed. Rep., 752, the question was presented whether a Norwegian seaman on a British vessel, injured on the high seas by negligent failure to provide proper ropes, has a maritime lien upon the vessel as given by the *lex*

fori, in view of the fact that British law confers no maritime lien under such circumstances. Judge Thomas, in refusing to recognize or to enforce the lien, says:

"The action is founded in tort; hence, the liability must be determined by the law of the place where the alleged tortious act was committed or suffered. * * * Every vessel outside the jurisdiction of a foreign power is a detached, floating portion of the territory of the country whose flag it flies and under whose laws it is registered."

To the same effect are:

The Egyptian Monarch, 36 Fed., 773;

The Maud Carter, 29 Fed., 156.

In *Pope vs. Nickerson*, Federal Case 11,274, 3 Story, *J.*, 465, decided in 1844, a Massachusetts vessel loaded cargo in Spain for Philadelphia. She met bad weather and put in to Bermuda for repairs, some of her cargo being sold to pay for part of the repairs and a bottomry bond being issued to pay for the balance. The vessel proceeded with the remainder of the cargo and was again forced by storms to put back to Bermuda, where after survey the Captain sold the whole of the cargo and the vessel and paid the bottomry bond, and held the balance. The vessel was repaired and proceeded to Philadelphia with the sound part of the cargo. The shippers sued the owners of the ship to recover the whole value of the cargo, claiming that it was lost to them by reason of the wrongful act of the master. The Court held that there was no limitation of liability under the general Roman,

English or American law or the law in force in Pennsylvania where the voyage ended but that *the limitation of liability Act of Massachusetts applied because her owners resided in Massachusetts and the vessel was a Massachusetts vessel*. In this case the suit was brought in the United States Court for the District of Massachusetts, not in the State Court, and the general Federal law knew no such limitation at that time.

II.

The American statute of limited liability applies ex proprio vigore only to American territorial waters and to American vessels on the high seas.

A.

IT IS FUNDAMENTAL THAT THE STATUTES OF ANY STATE OR NATION HAVE NO EXTRA TERRITORIAL FORCE OR EFFECT IN REGULATING ACTS OR OCCURRENCES BEYOND ITS TERRITORIAL BOUNDARIES.

In re Sowers, 12 Ch. Div., 522, 528.

Phillips vs. Eyre, L. R., 6 Q. B., 1, 28.

The Nostra Signora de los Dolores, 1
Dodson, 290.

American Banana Co. vs. U. Fruit Co.,
213 U. S., 347, 357.

Atchison, T. & S. Ry. vs. Sowers, 213
U. S., 55, 70.

The Scotia, 14 Wall., 170, 184, 185.

- Crapo vs. Kelly*, 16 Wall., 610.
Bank of Augusta vs. Earle, 13 Pet., 519.
The Lamington, 87 Fed., 752.
Whitford vs. Panama R. Co., 23 N. Y.,
 465, 471.
Mahler vs. Transp. Co., 35 N. Y., 352.
Thompson vs. Ketcham, 8 Johns., 190.
Le Forest vs. Tolman, 117 Mass., 109.
Powell vs. Gt. Northern Ry., 102 Minn.,
 448.
Nor. Pac. R. vs. Babcock, 154 U. S., 190,
 197.
Rundell vs. Comp. Gen. Transatlantique,
 100 Fed., 655, 660.
United States vs. Palmer, 3 Wheaton,
 610, 631, 634, 643.
United States vs. Klintock, 5 Wheaton,
 144.
United States vs. Davis (per Story, J.),
 2 Sumn., 482, F. C. No. 14,932.
 1 *Kent's Comm.*, p. 26.

Formerly the British Limitation Act was substantially identical with ours. It read, "No owner of any sea-going ship shall * * * be answerable in damages to an extent beyond the value of his ship and the freight due or to grow due," etc. Our Act has always read, "The liability of the owner of any vessel * * * shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending."

The British courts invariably held American and other foreign vessels liable without limit for negligent disasters at sea, while this form of the British Limitation Act was in force; although it

does not appear that the British courts were ever asked to apply the American Act as the *lex loci delicti*, after the American Act had been duly pleaded and proved.

The Wild Ranger (P. C.), Lush. Adm., 553.

Cope vs. Doherty, 2 De Gex & J., 614.

The Carl Johan, 3 Hag. Adm., 186.

The Amalia, 1 Moore P. C., N. S., 471, 475.

Our courts may well pause before giving British shipowners here the benefit of a more favorable rule of international law than is accorded to American shipowners in the British courts.

The Amalia, *supra*.

The Santa Cruz, 1 C. Rob., 50, 60, 64, 67.

The Adeline, 9 Cranch, 244, 288.

B.

THE ASSERTED ANALOGY WITH THE HARTER ACT.

It is said that as the Harter Act applies to acts done at sea by foreign vessels, the Limitation Act should follow the same rule.

The fundamental difference between the two acts is indicated by the difference of scope which the *language* of the acts expresses, by the difference in *national policy* represented by the two acts, as construed by our highest Court and by the difference of actual legislative intent shown by the *debates* in Congress.

1. The language of the two acts.

The Limitation Act is expressed to apply to "the owner of any vessel;" the Harter Act to "the owner of any vessel transporting merchandise or property from or between ports of the United States and *foreign ports*." Can it be said that because Congress intended to legislate in the Harter Act for both domestic and foreign vessels transporting goods to or from our shores, it must have intended to legislate, in respect of limitation of liability for foreign, as well as domestic vessels, *throughout the entire world*, whether or not such foreign vessels had ever come or would ever come to our shores?

Certainly this Court did not think so when it decided *The Scotland*, 105 U. S., 24. It was there called upon to say whether a British ship should have the benefit of the American Limitation Act in respect of a collision with an American vessel on the high seas. If the Court had been of opinion that it was the Congressional will that the act should apply, without exception, to every foreign and domestic ship at sea, as well as within our waters, it is *incredible* that the Court should not have said so, instead of saying as it did (pages 29, 30), in respect to collisions at sea, that "if the contesting vessels belonged to the same foreign nation," the Court "would determine the controversy" according to the laws of that foreign nation. The only controversy especially under consideration by the Court was as to whether the foreign or the domestic law of limitation of liability should govern.

The distinction between the specific language of the Harter Act and the general language of the

Limitation Act is pointed out in *The Chattahoochee*, 173 U. S., 540, 550:

"It will be observed that the language of the Harter Act is more specific in its definition of the vessels to which it is applicable, than the Limited Liability Act, which simply uses the words 'any vessel,' whereas, by the third section of the Harter Act, it is confined to 'any vessel transporting merchandise or property to or from any port in the United States.'"

The wording of the third section, "If the owner of any vessel transporting merchandise or property to or from any port in the United States," shows that the criterion of whether the Act should apply or not was the port to or from which the vessel sailed, and not the nationality of the vessel. Furthermore the Harter Act is confined in its scope to the regulation of the relations between a vessel and her own cargo.

In other words, the Act expressly deals with commerce to and from the United States.

The proposition that the general language of a statute will not be construed literally so as to impute to the legislative body an intent to regulate rights and obligations beyond the boundaries of the nation or State from which such legislative body derives its authority is abundantly established.

That a United States statute regulating maritime affairs, framed in such general language as to be literally applicable to the ships of all nations and to persons on board the ships of all nations, will be construed to relate only to ships (and to persons on board, or from on board ships) that

are not under the sovereignty of some foreign nation, was decided as far back as 1818. In the case of *United States vs. Palmer*, 3 Wheat, 610, Chief Justice Marshall announced the proposition just stated. The case involved the construction of a Piracy Act, the material language of which was as follows:

"If *any person* or persons shall commit, upon the high seas, or in any river, haven, basin, or bay, out of the jurisdiction of any particular State, murder or robbery * * * or if any captain or mariner of *any ship* or other vessel shall piratically and feloniously run away with such ship or vessel, or any goods or merchandise, to the value of fifty dollars, or yield up such ship or vessel voluntarily to any pirate; or if *any seaman* shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defense of his ship, or goods committed to his trust, or shall make a revolt in the ship; every such offender shall be deemed, taken, and adjudged to be, a pirate and felon, and being thereof convicted, shall suffer death; and the trial of crimes committed on the high seas or in any place out of the jurisdiction of any particular State, shall be in the district where the offender is apprehended, or into which he may first be brought" (3 W. 626, 627).

Upon an indictment for piracy, the Circuit Court for Massachusetts certified, amongst other questions, the following question to this Court:

"3. Whether the crime of robbery, committed by persons who are not citizens of the

United States, on the high seas, on board of any ship or vessel belonging exclusively to the subjects of any foreign state or sovereignty, or upon the person of any subject of any foreign state or sovereignty, not on board of any ship or vessel belonging to any citizen or citizens of the United States, be a robbery or piracy, within the true intent and meaning of the said 8th section of the act of congress aforesaid" (3 W. 613).

The fourth question certified was practically identical with the foregoing, except that it applied to persons who *were* citizens of the United States instead of to those who were *not* citizens.

The answer given by the Court to these two questions was as follows:

"The crime of robbery, committed by a person on the high seas, on board of any ship or vessel belonging exclusively to subjects of a foreign state, on persons within a vessel belonging also exclusively to subjects of a foreign state, is no piracy within the true intent and meaning of the act, entitled, 'an act for the punishment of certain crimes against the United States,' and is not punishable in the courts of the United States" (3 W., 643).

The grounds upon which Chief Justice Marshall, speaking for the Court, placed this decision, are indicated in the following extracts from his opinion:

"The question, whether this act extends further than to American citizens, or to persons on board American vessels, or to offences com-

mitted against citizens of the United States, is not without its difficulties. The constitution having conferred on congress the power of defining and punishing piracy, there can be no doubt of the right of the legislature to enact laws punishing pirates, although they may be foreigners, and may have committed no particular offence against the United States. The only question is, has the legislature enacted such a law? Do the words of the act authorize the courts of the Union to inflict its penalties on persons who are not citizens of the United States, nor sailing under their flag, nor offending particularly against them?

"The words of the section are in terms of unlimited extent. The words 'any person or persons,' are *broad enough to comprehend every human being*. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the legislature intended to apply them. * * * The 8th section also commences with the words 'any person or persons.' But these words must be limited in some degree, and the intent of the legislature will determine the extent of this limitation. For this intent, we must examine the law. The succeeding member of the sentence commences with the words:

"If any captain or mariner of *any ship or other vessel*, shall piratically run away with such ship or vessel, or any goods or merchandise to the value of fifty dollars, or yield up such ship or vessel voluntarily to any pirate."

"The words 'any captain, or mariner of *any ship or other vessel*,' comprehend all captains

and mariners, as entirely as the words 'any person or persons,' comprehend the whole human race. Yet it would be difficult to believe that the legislature intended to punish the captain or mariner of a foreign ship, who should run away with such ship, and dispose of her in a foreign port, or who should steal any goods from such ship to the value of fifty dollars, or who should deliver her up to a pirate when he might have defended her, or even according to previous arrangement. The third member of the sentence also begins with the general words 'any seaman.' But it cannot be supposed that the legislature intended to punish a seaman on board a ship sailing under a foreign flag under the jurisdiction of a foreign government, who should lay violent hands upon his commander, or make a revolt in the ship. These are offences against the nation under whose flag the vessel sails, and within whose particular jurisdiction all on board the vessel are. Every nation provides for such offences the punishment its own policy may dictate; and no general words of a statute ought to be construed to embrace them when committed by foreigners against a foreign government." (3 W. 630, 631, 632.)

See also

United States vs. Klintock (per Marshall, C. J.), 5 Wheaton, 144, 152.

Precisely the same reasoning which controlled the conclusion of Chief Justice Marshall forbids the possibility that when Congress in the Limitation Act of 1851 conferred the benefits therein men-

tioned upon "the owner of any vessel," it can have intended to include in these benefits (for instance), the Chinese owner of a registered Chinese vessel trading between China and Japan or navigating Chinese rivers. In other words, the absolutely literal construction of the language is impossible.

No doubt Congress might conceivably desire at some future time to confer the right of limitation of liability upon the owners of vessels engaged in American commerce bound from or to American ports, but it is clear that no such desire prompted the Act of 1851. A definite, specific class of vessels, both foreign and domestic, could not have been actually intended in this case by Congress, else the Act would have expressly described the class intended, just as the Harter Act afterwards did. The only alternative to applying the Act to all vessels whatever, is that of applying it to all vessels primarily subject to regulation by Congress, to wit: vessels flying the American flag and vessels within American territorial waters.

The proper principle of construction is well stated in *American Banana Co. vs. U. Fruit Co.*, 213 U. S., 347. Says Mr. Justice Holmes:

"Countries go further at times and declare that they will punish any one, subject or not, who shall do certain things, if they can catch him, as in the case of pirates on the high seas. In cases immediately *affecting national interests*, they may go still further. * * * But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done. * * * For

another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other States concerned justly might resent (page 356). * * *

The foregoing considerations would lead, in case of doubt, to a *construction of any statute* as intended to be *confined* in its operation and effect to *the territorial limits* over which the lawmaker has *general* and legitimate power. 'All legislation is *prima facie territorial*.' Ex parte Blain, In re Sowers, 12 Ch. Div., 522, 528; States vs. Carter, 27 N. J. (3 Dutcher), 499; People vs. Merrill, 2 Parker Crim. Rep. 590, 596. Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch" (page 357).

Vessels described by Congress in the Harter Act as "transporting merchandise to or from any port of the United States" were regarded as "affecting national interests" (to quote the words of Mr. Justice Holmes, *supra*), although flying foreign flags, and are, therefore, within the language of the Act. But vessels throughout the world, described in the general language of the Limitation Act, cannot be so regarded unless they be within our waters or fly the American flag.

2. The national policies of the two acts.

The national policies, of which the two acts are expressions, are wholly different. The one act was designed to increase the liability of foreign ships, the other to diminish the liability of domestic ships.

It was the purpose of the Harter Act, so far as possible, to prevent foreign vessels from enjoying the benefit of the foreign law which sustained and enforced bill of lading clauses exempting such vessels from liability for unseaworthiness, bad stowage, negligent stevedoring, insufficient custody, and other negligence, and thus to put American and foreign vessels on a footing of equality.

The Delaware, 161 U. S., 459, 472. *The Atlantic*

Until changed by the Harter Act, the foreign law probably rendered effective negligence clauses in domestic bills of lading, in case of foreign litigation, and also such clauses in foreign bills of lading, in case of domestic litigation. *Liverpool Steam Co. vs. Phenix Ins. Co.*, 129 U. S., 397, 459.

When Congress passed the Limited Liability Act, the evil to be dealt with was similar, viz., the unfair advantage of foreign ships over domestic ships. Congress might have dealt with the situation by forbidding our courts to enforce foreign laws of limited liability or by conferring upon American ships a privilege of limitation similar to that already enjoyed by foreign ships under foreign laws. The latter alternative was adopted as being the more effectual and the more considerate of the sensibilities of foreign nations.

That the purpose of the act was to change the position of, and to confer a benefit upon American

ships and shipowners *only* has often and unequivocally been declared by our highest court.

La Bourgogne, 210 U. S., 95, 120.

Richardson vs. Harmon, 222 U. S., 96, 103.

Moore vs. American Transp. Co., 24 How., 1, 39, 40.

Providence Co. vs. Hill Mfg Co., 109 U. S., 578, 588.

The Maine, 152 U. S., 122, 128.

Chamberlain vs. Western Transp. Co., 44 N. Y., 305, 308.

It is true that since the American Limitation Act was passed in 1851 to confer on American vessels the same privilege of limitation of liability theretofore enjoyed by British vessels, Great Britain has abandoned the exact principle or rule of limitation then in force and which was adopted by the American Act and has substituted therefor a different principle of limitation based on tonnage.

Although Congress has thus far permitted this difference to remain, the substantial competitive equality, which was the end for which Congress strove in 1851, has not been destroyed. For the British limit of liability (except in respect of the most cheaply constructed vessels) is sometimes greater, sometimes less than ours depending upon whether or not the vessel, whose owner is seeking limitation, is seriously injured in the disaster.

Congress could not have intended that a foreign shipowner should invoke the jurisdiction of his own courts whenever the American limit of liability was greater, and that of the American courts when such limit was less than that fixed by his own laws. If there be no escape from such an unfor-

fortunate result in the exceptional case of collision on the high seas involving vessels of different nations (as, for instance, by adopting even now the German or the French rule), that is no reason for imputing to Congress a desire unnecessarily to create so pernicious a rule in all cases of disaster to foreign vessels at sea.

3. The debates accompanying the passage of the two acts.

(a) *That the acts of 1851 and 1884, limiting liability, and the act of 1886, extending their provisions to lake vessels, barges, etc., were intended by Congress to apply only to American vessels, is clearly shown by the proceedings and debates and by their titles.*

The bill which ripened into the Act of 1851, was first introduced in the Senate January 25, 1851 (see Congressional Globe, Vol. 23, page 332). Senator Hamlin of Maine, proposer of the bill and chairman of the Committee on Commerce, which afterwards reported it, stated upon its introduction, that it was predicated on the English law, and that it seemed advisable to the Committee that the *American marine* should stand at home and abroad as well as the English marine, and that *American commerce* should not stand on a different footing from British commerce (Cong. Globe, Vol. 23, page 332) and again February 26, 1851, speaking from the floor of the Senate, he said, "it places *our commercial marine* upon the same basis as that of England" (Cong. Globe, Vol. 23, page 713).

Senator Davis of Massachusetts said: "It is simply placing our mercantile marine on the same footing as that of Great Britain, being competitors side by side" (Cong. Globe, Vol. 23, page 713).

Senator Cass said; "The interest of our whole commercial marine is at stake" (Cong. Globe, Vol. 23, page 713).

Senator Rantoul said; "The bill was to remove the burden from American shipping" (Cong. Globe, Vol. 23, page 717).

Further excerpts from the debates will be found in the appendix to this brief, pages 98-102.

On February 27th, 1851, the bill passed the Senate by a vote of 28 to 21 (page 758), and on March 3rd, 1851, passed the House, apparently without debate (page 777).

Nowhere in the proceedings is there any indication of an intent to make this law applicable to foreign vessels, while the contrary appears throughout the whole.

The provisions of the Act of 1851 did not extend to contractual obligations or to non-maritime liabilities.

In 1881, when Congress had before it the problem of a decreasing American merchant marine, an Act was passed, bearing the following title:

"An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes" (23 Stat. 53, 57, U. S. Comp. Stat., page 2945).

Section 18 of this Act, limiting the liability of an individual owner to his proportion of any debts

and liabilities (contractual, as well as non-maritime) and the aggregate liabilities of all the owners of the vessel on account of the same to the value of such vessel and freight pending, appears on page 3973 of Vol. 15; page 4, of the Congressional Record for May 8, 1884.

The section referred to is part of an act which was designed to revive the declining American merchant marine, giving certain immunities and privileges to vessels of the United States. In other parts of the act numerous changes were made in the law affecting crews and officers on American vessels and many of its sections show it to be intended to benefit *American vessels and Seamen*; such as Sections 2, 3, 6, 7, providing for the discharge of seamen and reclaiming of deserters by Consular offices abroad; Section 13, requiring certain statements of masters of vessels on their return to the United States; Section 21, providing for the painting of the name and port of the vessel, etc.

Section 10 of the act (prohibiting advance wages) was by its terms made specifically applicable to foreign vessels.

The debates and discussions in the House, where the bill originated, show conclusively that the intent of Congress was to limit the benefits of the Act to American vessels and to encourage United States citizens to build or buy vessels and to enter the foreign trade in free competition with British vessels, so that such vessels could be sailed to as great an advantage under the flag of the United States as under the British flag.

The report of the committee in charge of the bill in the House (Congressional Record, Vol. 15, page 3127) says:

"Your committee are of opinion that Congress would be derelict in its duty to a great national interest which is so intimately connected with the prosperity of the people in peace, and so essential to the nation's defense and safety in war, if it did not at once inaugurate measures looking to the modification of our shipping laws so as to make them as favorable to an American vessel sailing under the Stars and Stripes as are the laws of the United Kingdom to an English vessel sailing under the British flag."

Mr. Cox, speaking on the bill, at page 3433 said:

"In view of these indisputable facts, why should we still continue to protect foreigners in our carrying trade and shut out our own people from the profits that might accrue to them?"

All the speeches in Congress (Vol. 15, Cong. Rec., pages 3434-3452) are devoted to the disappearance of the American merchant marine from the foreign carrying trade and the changes which should be made to revive it.

In order further to encourage American Shipping, Congress passed the Act of June 19, 1886, of which Sec. 4, extended the limited liability statutes to all vessels used on lakes, or rivers, or in inland navigation, canal boats, barges and lighters. This act is entitled:

"A bill to abolish certain fees for official services to American vessels and to amend the laws relating to shipping commissioners, seamen, and owners of vessels" (24 Stat., 80; U.

S. R. S., Sec. 4289; U. S. Comp. Stat., page 2945).

As its title indicates, it was for the further relief of American shipowners. It was proposed in the House February 3, 1886, by Mr. Dingley of Maine (Congressional Record, Vol. 17, Part 2, page 1108).

A perusal of the whole Act shows that the purpose was to give American vessels an *advantage* over foreign vessels and to attempt to revive the American merchant marine. The Sections that were intended to be applicable to foreign vessels, such as 3, 8, 12, are specifically made so by the words of the act. Mr. Hewitt in speaking on the bill said (17 Cong. Rec., page 1110) :

"Now, the only excuse for removing these charges is that you want to help the shipping trade, which is now in distress."

Mr. Dingley said (17 Cong. Rec., page 1110) :

"The design of the committee is *to sweep away all these charges on vessels of the United states* where it can be done without relieving *foreign vessels* from the same charges."

Mr. Dunn, who spoke for the bill, read a letter from the Treasury Department in part as follows (page 1145) :

"*The items go far towards placing our ships in a position to compete with foreign vessels*
* * *

"In the foreign trade especially they have to compete with the cheapest vessels of the world and should, therefore, be relieved of all unnecessary burdens, otherwise the business of shipping in the United States, so far as regards foreign trade must be altogether discontinued." •

The bill was reported by the Committee on American Ship Building & Ship Owning Interests. Mr. O'Neill, speaking for the inclusion of canal boats and lighters in the Act (17 Cong. Rec., page 1147), said:

"We are seeking to do the best we can for *American shipping.*"

Mr. Holman (17 Cong. Rec., page 1149) called attention to the fact that the Act of 1851 was designed to place American vessels engaged in foreign commerce, upon the same footing as the vessels of other nations, to which Mr. Dingley acceded.

On May 17, 1886, the amendment including canal boats, etc., was agreed to in the Senate (17 Cong. Rec., page 4571).

Nowhere in the proceedings of Congress relative to these three acts can any foundation be discovered for the notion that Congress intended to change the law for foreign ships or to confer any benefits upon them.

If there had been any intention to extend the limited liability law to foreign vessels, it is almost inconceivable that that question should not have been touched upon in either House of Congress during the debates, reports and petitions presented concerning these three bills. For instance, the question of reciprocity would undoubtedly have been discussed if there were any such intention, that is, the question whether if we gave the benefit of our Act to foreign vessels a like benefit would be given to our vessels by foreign countries. In this connection, the views of Lord Stowell expressed in deciding the case of *The Carl Johan*, 2 Hagg. Adm., 186; may be referred to.

From the proceedings it seems clear that Congress intended that our limited liability law should

apply to American vessels and that foreign law should apply to foreign vessels. Indeed the titles of the Acts of 1884 (already quoted), which the Supreme Court has held to be *in pari materia* with the Act of 1851 (*Richardson vs. Harmon*, *infra*), and of 1886, would seem to be conclusive as to this intent of Congress.

These three acts form a single system of legislation. It cannot be supposed that Congress, in the Act of 1851, intended to confer the benefit of limitation of liability upon foreign and domestic ships, since it is clear that in the Acts of 1884 and of 1886 it intended to confer them only on domestic ships.

(b) *The proceedings in Congress discountenance appellant's argument that foreign vessels must be within the scope of the Limited Liability Act because they are concededly within the scope of the Harter Act.*

The bill, out of which the Harter Act grew, was first called up in the House and read on December 14th, 1892, by Mr. Lind of Minnesota, and as originally drawn applied to carriers both by land and sea and forbade the insertion of clauses in bills of lading, freeing the carrier from the consequences of negligence in handling, stowing and caring for and delivering cargo or equipping or making the vessel seaworthy, and also provided that the owner of a seaworthy vessel should not be held responsible for errors in judgment in navigation or management of the vessel, if navigated with ordinary care, nor for dangers of the sea, etc. It was immediately amended so as to refer only to vessels in the foreign trade (*Congressional Record*, Vol. 24, Part 1, page 147).

Mr. Lind said (24 Cong. Rec., page 148) :

"The bill simply relates to vessels engaged in the foreign trade and does not in any manner concern or touch inland and coastwise commerce." * * * "Nearly all the carrying of flour and other Western commodities from this country to Europe is done *by foreign steamships*. These steamship companies have in recent years exacted the most unreasonable bills of lading that can be imagined—bills of lading in which they exempt themselves, not only from risk of every character incident to transportation, but from every liability on account of their own negligence. More than that, they stipulate in their bills of lading that the American shipper shall have his rights or his claims whatever they may be, *adjudicated according to the laws of Great Britain* and only in the courts of that country. This bill simply provides that it shall not be lawful for vessels engaged in foreign commerce to exact bills of lading of that character." * * *

"The bill is not designed to hamper commerce; it is not designed to interfere with the shipment of any commodities to Europe; *but it seeks to give our citizens some protection against foreign shipowners*, so long as we have no vessels of our own to carry on this traffic."

The report of the Sec. of the Treasury (House Exec. Documents, Vol. 27, page XCV) shows that for the year ended June 30, 1892, only 1¼% of the value of imports and exports carried between the United States and Europe were carried in American vessels; that in 1892 foreign vessels consti-

tuted 75-9/10% of the total tonnage engaged in the American foreign carrying trade, and in the same year the foreign tonnage entered at the port of New York was 6,309,104 tons, while the domestic was only 994,911 tons.

The report of the Committee on Interstate and Foreign Commerce on the bill shows that it was intended to apply to the foreign trade and to prohibit clauses in bills of lading issued by foreign vessels providing that the responsibility should be governed by foreign law. The report concludes as follows:

"As thus amended, the bill relates solely to cargoes of vessels in the foreign trade, and the Committee recommends its passage" (24 Cong. Rec., pages 148, 149).

Mr. Harter of Ohio, whose name was given to the bill, said (24 Cong. Rec., page 172):

"It is a measure which deprives nobody of any right, but which will by its operation *deprive some foreign steamship companies* of certain privileges which for many years they have exercised, to the great disadvantage of American commerce. That is all there is in it. It does not affect one one-hundred of 1 per cent. of American shipping. Sailing vessels and craft of that kind are always willing to give any reasonable form of bill of lading which the consignor may demand; but, on the contrary, the great steamship companies, almost universally controlled by Englishmen, invariably force the consignor to take the form of bill of lading which they desire; and, as time is the great element in shipment, we are compelled to accept what they give us or ship by slower

lines, which means the loss of part of our foreign customers.

"The Board of Trade of Glasgow, the Chambers of Commerce of London and Liverpool, unite with the American shipper and exporter in the demand that this bill should become a law.

"We have no American vessels that it affects.
 * * * American shipping interests are not unfavorably affected, for they are already under control of one common law, which we very properly seek to extend to foreign shipping. It is the great British Shipping interests that will be affected."

On February 4, 1893, the bill was taken up in the Senate (Congressional Record, Vol. 24, Part 2, page 1180). The amendments recommended by the Committee were accepted without debate and the bill passed (page 1181) and sent to conference with the House, the Act (3rd Section) being extended to domestic vessels and amended so as to relieve from liability for faulty navigation and management where due diligence had been exercised to make the vessel seaworthy. Nothing in the amendments counteracted in any way the intention shown in the House to apply the bill to foreign vessels engaged in commerce with other countries.

On February 7, 1893 (Congressional Record, Vol. 24, Part 2, page 1291) the Senate amendments came before the House and Mr. Lind explained that originally the bill related only to vessels engaged in the foreign carrying trade and prohibited them from inserting provisions in bills of lading relieving them from the consequences of their own negligence, and that this principle was adhered to by

the Senate, with the third section amended, so as to free both vessels engaged in the foreign trade and the domestic trade from the consequences of negligent navigation provided due diligence had been taken to make them seaworthy. He said (page 1291) :

"One important new feature is presented by the Senate amendments. As the law now stands American vessels are subjected to certain hardships, from which they cannot exempt themselves by contract or otherwise, to which foreign vessels are not subjected. A foreign vessel, of course, can contract with a shipper and make provision against any liability on its own part for the negligence of its master, or owners; but the object of this bill is to limit this right. An American vessel cannot make any such contract, or absolve itself from any such liability, for the reason that it is always amenable to the Federal courts, and the Federal courts have always held that contracts of that character are against public policy."

Sections 1 and 2 of the Harter Act, as finally passed were expressly limited to vessels engaged in the foreign trade; that is, for the most part foreign vessels, while the benefit of the Act in Section 3 was extended to all vessels transporting property to or from any port in the United States so as to give all American vessels as well as foreign vessels the advantage of that section of the Act.

The wording, therefore, of the third section was changed so as to apply to vessels engaged in the domestic trade, as well as the foreign trade, in order to help American shipowners; but all the de-

bates, petitions and reports show that the intention to apply the act to foreign vessels was continuous.

4 Judicial decisions.

That the foregoing considerations, founded upon the titles of the Limitation Acts and upon the debates and committee reports in Congress are of weight in construing the meaning of the Acts appears from the decisions of this and other courts in analogous cases.

In *Richardson vs. Harmon*, 222 U. S., 96, one of the latest decisions in this Court interpreting the limited liability statutes of the United States, the Court held that the Act of 1884 was intended to add to the enumerated claims of the old law "any and all debts and liabilities" and was, therefore, equivalent to an amendment of the Act of 1851. This is pointed out by the Court on page 105, where it is shown that it was not intended to repeal the former Act, the provision as to knowledge or privity not being repeated in the later Act. The Court held that the intention of the Act of 1851, as well as of the later Act, as appears from the motive declared in its title, was to benefit American vessels and said at pages 103, 104:

"The legislation is *in pari materia* with the Act of March 3, 1851, 9 Stat., 635. C. 43, as carried into the Revised Statutes as §§4283, *et seq.*, and must be read in connection with that law." * * *

"The avowed purpose of the original act was to encourage *American* Investments in ships. This was accomplished by confining the owner's individual liability, when not the

result of his own fault, in the instances enumerated, to his share in the ship. The same public policy is declared to be the motive of the act of which this section is a part."

In Ayer & Lord Co. vs. Kent, 202 U. S., 409, this Court, in arriving at a correct interpretation of the meaning of another Section of the Act of 1884, that is, Section 21, dealing with the ports of enrollment and of ownership of vessels, quoted in its opinion the statements of Senator Frye, Chairman of the Committee, in reporting a proposed amendment, which became Section 21, and also the statements of Senator Hale, and said at page 425:

"The Act in question was an elaborate one, containing 30 Sections, *relating to the American Merchant Marine*, and was entitled 'An Act to remove certain burdens of the American Merchant Marine and encourage American foreign carrying trade, and for other purposes.'"

In the "*Delaware*," 161 U. S., 459, this Court pointed out that the title of the Harter Act showed that its object was to modify the relations existing between the vessel and cargo, and quoted at length from the petition of the Glasgow Corn Trade Association, submitted to Congress, to show the evils that were to be remedied, and thereby the intention of the Act.

The meaning of an Act may properly be ascertained by resorting to the history of its passage through the Legislature.

Blake vs. Nat. Banks, 23 Wall., 307, 317.

The debates and reports of Committees may be consulted for the purpose of ascertaining the general object of the legislation proposed and the evils sought to be remedied.

Oceanic Nav. Co. vs. Stranahan, 214 U. S., 320, 333;

Jennison vs. Kirk, 98 U. S., 453, 459;

Holy Trinity Church vs. U. S., 143 U. S., 457, 464;

Wadsworth vs. Boysen, 148 Fed., 771;

Shallus vs. U. S., 162 Fed., 653;

American Net & Twine Co. vs. Worthington, 141 U. S., 468, 471;

The Collector vs. Richards, 23 Wall., 246, 258.

Buttfield vs. Stranahan, 192 U. S., 470, 495.

Especially the remarks of a member in charge of the Bill may be referred to for the above purposes.

U. S. vs. Wilson, 58 Fed., 768.

Ex parte Farley, 40 Fed., 66, 69.

SECOND POINT.

The law of Great Britain must be taken, presumptively, as a law holding shipowners to unlimited liability.

In default of proof of the British law, we contend that the foregoing proposition applies to every phase of litigation, in which it is necessary to invoke a presumption on this subject. Never-

theless, it is to be noted that the question actually presented to this Court, as shown by the "Statement of Facts" contained in the Certificate, is confined to a question of pleading.

The question is this: in a case involving a marine disaster properly governed by British law, is a sufferer who has appeared in the limitation proceeding entitled to require the British petitioner to state in his petition for limitation or in an amendment thereof, with the ordinary particularity demandable in a good pleading, the substance of the British law of limited liability? and if petitioner refuse to make any allegation on the subject (although given abundant opportunity to amend) is not the Court justified in presuming, as the District Court actually did in this case, that the British law is one of unlimited liability?

It would be most unfortunate if it were held that the federal practice cannot afford litigants an early opportunity of obtaining a ruling from an appellate court or, indeed, from any court as to whether claimants may look to the British law with its \$3,000,000 limitation fund or must content themselves with the American law (with its \$96,000 limitation fund).

In a case of this nature, with numerous and scattered witnesses, many months must elapse before a trial can be had on the issues of negligence and privity and many years must elapse before the enormous number of claims can be proved if they are contested. Meantime, the important issue of law, above referred to, must, if raised by answer, remain unreviewed by an appellate court and may, perhaps, not even be considered by the District Court; and the numerous claimants must remain

in ignorance as to whether their claims are probably of substantial, or of trivial value.

Claimants have done their utmost to obtain a prompt ruling.

At the very outset the point was taken by the appellee, Harry Anderson, that upon the facts concerning the disaster admitted in the petition, petitioner's right of limitation, if any such there was, must be confined to that granted by the terms of the British, not the American statute conferring a right of limitation that under such British statute, as applied to the Titanic disaster, petitioner's limit of liability would be based upon tonnage, not upon surviving values and would be upwards of \$3,000,000 and not the \$91,805, to which the petition (Transcript of Record, fol. 21) sought to limit petitioner's liability and that the preliminary injunction, then just granted by the Court, had been granted improvidently and erroneously because petitioner had given no security, for the protection of the claimants thus enjoined, other than a \$96,000, ad interim stipulation.

Anderson accordingly moved. December 5, 1912, for an immediate reference to ascertain the terms of the British Limitation Act, unless conceded by petitioner's proctors, and for the amendment of an existing order of reference to Commissioner Goodrich so as to require him to ascertain the sum of money to which the terms of the British Act, when conceded or established, would entitle the petitioner to limit its liability. In support of this motion, there was served and filed in the District Court a competent affidavit setting forth the

text of the British statute. The salient features of the British Act, as shown by the moving papers, are set forth in an appendix to this brief, page 96.

In resisting the motion, appellant urged that the terms of the British statute would be immaterial because the gist of the proceeding inaugurated by the petition was that of a limitation to the value of the wreck, life boats, and pending freight of the Titanic and that such a proceeding could not be transformed, without petitioner's consent, into one seeking the application to the case of an entirely different scheme of limitation. On this point, the petitioner's brief, filed in opposition to the motion, contained the following passages:

"It is contended that the petitioner is entitled to limit its liability only in accordance with the provisions of the British Law of Limited Liability. If this claim is well founded, the only possible result would be to put an end to the present proceeding. Parties cannot be brought into Court to litigate one question and then, contrary to the pleadings, be compelled to litigate another. * * *

"If the Limited Liability Act of the United States has no application, the only alternative for the Court is to dismiss the proceeding, or, at most, to permit the petition to be amended so as to claim the benefit of the Limited Liability Act of Great Britain. But in neither case could the plaintiff, or the petitioner, be compelled to amend against his will and seek the benefit of a law which he had not pleaded. * * *

"It is true that the petitioner here has submitted its rights to the Court, but it has done

so only in accordance with the United States Limited Liability Act, and it cannot be compelled to take the benefit of some other Act which it has not invoked."

Judge Hough, before whom Anderson's motion was made, sustained petitioner's reasoning. In his opinion, he said, among other things:

"The merits or demerits of the argument" (as to whether the British, or the American law of limited liability governs the case) "probably depend in their last analysis on the question argued in *The Eagle Point*, 142 Fed., 453, *i. e.*, whether methods or rules for apportioning and enforcing liability for loss and damage are matters of *right or remedy*. * * * Before any such detail of administration" (referring to the proceedings under the pending reference) "as is here prayed for is granted, the petitioners are entitled to be heard in a direct proceeding to ascertain whether what they demand is lawful or not. * * * They (petitioners) are either entitled to what they demand, or they are not. If claimants think they are not, let them answer the petition or *except thereto* and so raise the matter. Until that question is directly settled, the present motion is idle and should be and is denied."

Promptly after this decision, the exceptions were filed asserting that the averments of the petition were insufficient to justify the granting of any privilege of limitation of liability or the maintenance of a proceeding to that end and charging expressly as a defect, petitioner's failure to allege the British law of limited liability. The failure

of the petitioner to allege the tonnage of the Titanic, with the particularity that would enable the British statute to be applied, was also expressly excepted to.

The full text of these exceptions appears in the certificate (fols. 16-20).

A

THE PETITION CANNOT BE AIDED BY ANY LEGAL RULE THAT THE BRITISH LAW OF LIMITED LIABILITY IS PRESUMED TO BE SIMILAR TO THE AMERICAN LAW, UNTIL SHOWN BY PROPER PLEADING AND PROOF NOT TO BE SIMILAR. NO SUCH RULE EXISTS.

1. The view occasionally taken by Courts twenty or thirty years ago was that in absence of proof of any foreign law that should be found to be material, the *lex fori* might be used to fill the gap. But this idea is now practically abandoned.

Where the issues in the case are properly to be determined by an application of the laws of a foreign country of which no proof is made, the only sound presumption that can, in general, be indulged is that if such country is one which, in general, recognizes the common law, then the rules and principles of the *common law* as understood at the forum are in force in such foreign country and therefore govern the case.

Crosby vs. Cuba R. Co. (C. C.), 158 Fed., 144, 147.

Cuba R. Co. vs. Crosby, 222 U. S., 473, 479.

Lloyd vs. Matthews, 155 U. S., 222, 227.

Crashley vs. Press Pub. Co., 179 N. Y., 27.

Wooden vs. W. N. Y. & P. R. Co., 126
N. Y., 10, 15.

Whitford vs. Panama R. Co., 23 N. Y.,
465, 468.

Carpenter vs. Grand Trunk R. R., 72 Me.,
388.

In the case of *Cuba R. Co. vs. Crosby* (*supra*), the action was brought by a citizen of Tennessee against his employer for personal injuries sustained, it was alleged by the plaintiff owing to a defect in the machinery of the planing mill in which he was employed as an engineer. The action was predicated upon the common-law obligation of the employer to provide proper machinery and appliances and, although the accident happened in Cuba and the Cuban law was not pleaded or proved by either party, the Circuit Court and the Circuit Court of Appeals sustained a verdict for the plaintiff upon the presumption that the foreign law, if not pleaded or proved, corresponds with the principles of the *common law* as understood by the *curia fori*.

The presumption indulged by these two Courts was, of course, far better grounded in principle than the presumption which appellant here seeks to invoke. For the non-statutory principles of the common law, usually regarded as representing immutable principles of justice always existing in the minds and consciences of men, might well be defended as universally applicable unless affirmatively displaced by a different law, duly pleaded and proved. No reason appears, however, for presuming that an unproved foreign law will coincide

with an American *statute* which modified the common law previously existing in this country; a statute which abridged the natural right of sufferers from torts to their regular *restitutio in integrum* and did so, professedly, not upon considerations of natural justice, but in order to foster our carrying trade and to increase the number of our ships.

The Alene, 1 W. Rob., 111, 117;

Moore vs. American Transportation Co.,

21 How., 1, 40,

and cases cited on page ⁶⁶~~83~~ of this brief.

But even the presumption indulged by the two lower Courts in the Crosby case was unjustified. Upon a review by the Supreme Court of the United States, a reversal was ordered.

Mr. Justice Holmes says:

"It may be that in dealing with rudimentary contracts or torts made or committed abroad, such as promises to pay money for goods or services, or battery of the person or conversion of goods, courts would assume a liability to exist if nothing to the contrary appeared. *Parrot vs. Mexican Central Ry. Co.*, 207 Mass., 184. Such matters are likely to impose an obligation in all civilized countries."

(It was undoubtedly the violation of some fundamental principle or rule of navigation that Mr. Justice Bradley had in mind when he said that the law as understood in this country would be applied to a collision in British waters, unless the British law were shown to the Court. 105 U. S., 24, 29.)

"But when an action is brought upon a cause arising outside of the jurisdiction, it always

should be borne in mind that the duty of the court is not to administer its notion of justice but to enforce an obligation that has been created by a different law. *Slater vs. Mexican National R. R. Co.*, 194 U. S., 120, 126. The law of the forum is material only as setting a limit of policy beyond which such obligations will not be enforced there. With very rare exceptions the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. *American Banana Co. vs. United Fruit Co.*, 213 U. S., 347, 356. See *Bean vs. Morris*, 221 U. S., 485, 486, 487. That and that alone is the foundation of their rights.

"We repeat that the *only justification* for allowing a party to recover *when the cause of action arose in another civilized jurisdiction is a well founded belief that it was a cause of action in that place.* The right to recover stands upon that as its necessary foundation. It is part of the plaintiff's case, and if there is reason for doubt he must allege and prove it. *The extension of the hospitality of our courts to foreign suitors must not be made a cover for injustice to the defendants of whom they happen to be able to lay hold.*

"In the case at bar, the court was dealing with the law of Cuba, a country inheriting the law of Spain, and, we may presume, continuing it with such modifications as later years may have brought. There is no general presumption that that law is the same as the common law. We properly may say that we all know

the fact to be otherwise. *Goodyear Tire & Rubber Co. vs. Rubber Tire Wheel Co.*, 164 Fed. Rep., 869. Whatever presumption there is is purely one of fact, that may be corrected by proof. Therefore the presumption should be limited to cases in which it reasonably may be believed to express the fact. Generally speaking, as between two common law countries, the common law of one reasonably may be presumed to be what it is decided to be in the other."

Cuba R. Co. vs. Crosby, 222 U. S., 473, 478, 479.

Other authorities to the effect that the presumption of identity of the foreign law with the common law of the forum is indulged as a practical rule of convenience only where the situation is such as to create a strong probability that the two laws are in truth and fact identical or substantially so, are:

Dainese vs. Hale, 91 U. S., 13, 20, 21.

Whitford vs. Panama R. Co., 23 N. Y., 465.

Langdon vs. Young, 33 Vt., 136.

McDonald vs. Mallory, 77 N. Y., 546.

Lewis vs. Woodfolk, 2 Baxter (Tenn.), 25.

Leonard vs. Columbia Nav. Co., 84 N. Y., 48.

Minor Conflict of Laws, Sec. 214, and cases cited.

2. No legal presumption exists, therefore, in aid of the petition. On the contrary, the presumption is that the British law on the subject of limitation of liability is that which is represented by the common law, judicially known to our courts.

Commonwealth vs. Chapman, 13 Mete., 68.

U. S. vs. Reid, 12 How., 361, 363.

Murray vs. Chicago & N. W. Ry. Co., 62
Fed. Rep., 24, 27.

Cited with approval in *Western Union
Tel. Co. vs. Call Pub. Co.*, 181 U. S., 92,
103.

The common law, as understood in this country
and in England, charges petitioner with liability
without limit.

The Volant, 1 W. Rob, 383, 387.

The Scotland, 105 U. S., 24, 28.

The Great Western, 118 U. S., 520, 534.

The Main, 152 U. S., 122, 126.

The Bourgogne, 210 U. S., 95, 116.

Therefore it must be presumed that in Great
Britain, ship-owners are liable without limit for
disasters governed by British law, if the ship-
owner before the Court, challenged by his adver-
sary to establish his legal right to enjoy the bene-
fit of any statute or law of limitation of liability,
fail to plead and prove the British law.

The meaning of Mr. Justice Bradley's dictum
in *The Scotland*, 105 U. S., 24, 29, 31, is merely
that where the state of British law is *not chal-
lenged* by exceptions or answer and the Court
does not require that law to be shown, the parties
litigant may be deemed to have *consented* to the
application of the American Statute as they did
in *The Thingvalla*, 48 Fed., 764. This dictum was
subsequently explained as having reference to no
other class of cases than those involving collision
between vessels belonging to different nations.

Cuba R. Co. vs. Crosby, 222 U. S., 173, 478.

But by their exceptions, claimants have framed an issue in respect of the foreign law. They demand that petitioner set forth the exact terms of the statute of limitation (if any there be) in force at the time and place of disaster. If the British statute was in fact in force, the duty is thus cast upon petitioner of setting forth an exact statement of the statute.

Schluter vs. Bowery Bank, 117 N. Y., 125, 131.

Under the legal principle actually applicable here, the American Courts must be taken as having judicial knowledge of the fact that in 1776 when this country became independent of Great Britain, the laws of the latter (statutory and non-statutory) held shipowners to unlimited liability for torts in the navigation of their ships and the courts are bound to presume, in the absence of suitable pleadings and proof to the contrary, that such is still the state of the British law.

Matter of Huss, 126 N. Y., 537, 542.

Rayham vs. Canton, 3 Pick., 293.

Stokes vs. Macken, 62 Barb., 145.

Malpica vs. McKoen, 1 La. (O. S.), 248, 255.

Arayo vs. Currel, 1 La. (O. S.), 528, 541.

Davis vs. Curry, 5 Ky., 238, 240, 241.

Berluchaux vs. Berluchaux, 7 La. (O. S.), 34.

Mer. Cen. Ry. vs. Glover, 107 Fed., 356, 361.

Mer. Cen. Ry. vs. Marshall, 91 Fed., 933, 938.

People vs. Pres., etc. of Manhattan Co.,
9 Wend., 351.

People vs. Calder, 30 Mich., 85.

Cochran vs. Ward, 31 N. E. Rep., 581.

Scales vs. Sir John Key, 11 Ad. & Ell.,
819.

Dempster vs. Stephen, 63 Ill. App., 126.

Newton vs. Cocke, 10 Ark., 169, 173.

Miller vs. McVeagh, 40 Ill. App., 532.

The Pawashick, 2 Lowell, 142.

The only British law on this general subject existing in 1776 was the Act of 1734 (7 Geo. II. C., 15), the scope of which was confined to embezzlement by the master and crew and acts *ejusdem generis*.

The Dundee, 1 Hagg. Adm., 109, 121.

Abbott's Law of Merchant Ships and Seamen, 14th Ed., p. 1045;

Machlachlan's Law of Merchant Shipping,
5th Ed., p. 128.

B

THE ASSERTION BY A SHIPOWNER OF HIS FREEDOM FROM FAULT DOES NOT JUSTIFY THE COURT IN ENTERTAINING A LIMITATION PROCEEDING UNLESS, IN CASE OF HIS OPPONENT PREVAILING ON THE ISSUE OF NEGLIGENCE, HIS AVERMENTS BRING HIM PRIMA FACIE WITHIN THE SCOPE OF SOME LAW OF LIMITED LIABILITY, PROPERLY APPLICABLE TO THE FACTS OF THE CASE.

Appellant has mentioned that the Limitation Act of 1851 was entitled "An act to limit the liability of shipowners *and for other purposes*," intimating that one of the other purposes may have been to

enable an offending shipowner to institute an affirmative proceeding designed to prevent him from being made a defendant in any suit or action, even where the admitted facts did not justify any *limitation of liability*.

The text of the statute shows that the *other purposes* were the *entire exoneration* of a shipowner from liability in two special instances, not pertinent to the Titanic case, viz.: (a) for fire not due to his personal fault (Sections 1; 9 Stat. 635); (b) for loss of jewelry, etc., shipped without having the character and value of the goods called to his attention by suitable entry on the bill of lading (Section 2); and that it was designed to bring about also (c) the prevention of the shipping of oil of vitriol and other dangerous articles without notice (U. S. Laws, 31st Cong., 1850-51, pp. 635, 636).

Unless petitioner establish the fact that there is some statute of limitation of liability in force at the time and place of the disaster, the entire proceeding must fail, notwithstanding proof of petitioner's freedom from fault. For in absence of any such statute, petitioner is not entitled to take an affirmative proceeding to foreclose and cut off all causes of action growing out of a particular disaster or to compel all claimants to subject themselves to the inconvenience and expense of coming into a single complicated, cumbersome proceeding, necessarily so on account of the great number of parties litigant. It would have no better right to maintain such a proceeding than would a railroad company in respect of a non-negligent train wreck, happening in consequence of lightning, tempest, or flood.

THIRD POINT.

An explicit allegation of the substance of the British limitation act and of the facts concerning the Titanic's tonnage is essential to the maintenance of the limited liability proceeding.

If British law governs the Titanic disaster, the petition was properly subject to exceptions under the authorities.

Cope vs. Doherty, 2 De Gex & J., 614;

The Amalia (1863), 1 Moore P. C., N. S., 471.

The Wild Ranger (1862), Lush Adm. 553.

Richardson vs. Harmon, 222 U. S., 96;

Delaware R. Ferry vs. Amos, 179 Fed., 756;

The Mamie, 5 Fed., 813; 8 Fed., 367; 110 U. S., 742;

In re Eastern Dredging Co., 138 Fed., 942.

In the case of *The Mamie*, supra, a special plea was filed to a petition for limitation of liability, asserting as a fact that the steam-yacht mentioned in the petition was a pleasure vessel not engaged in commerce and asserting as a legal proposition, based thereon, that the petition was insufficient to justify granting its prayers (a) for exoneration from liability and (b) for limitation of liability. The special issue of fact having been determined, by a reference, in favor of the claimant, the spe-

cial plea was thereupon treated like exceptions to the petition. The petition was accordingly held bad and dismissed *without any trial* being had in respect of the *allegations* of the petition that there was *no fault* and that petitioner was *not in privity* with the fault, if any there was. The injunction being dissolved, an appeal was prosecuted to this Court and a continuance of the injunction was moved for pending the appeal. This was refused.

If this Court had entertained the view that, although the owner of a pleasure vessel may not be entitled to *limit* his liability under the statute, he may possibly be entitled to forstall claims by an affirmative proceeding and in such proceeding defeat them by a showing of freedom from fault, it seems almost certain that the injunction would have been continued.

LAST POINT.

The first two certified questions should be answered in the negative. The answer to the last question is, the law of the foreign country.

Respectfully submitted,

FREDERICK M. BROWN,
GEORGE WHITEFIELD BETTS, JR.,
Advocates for Appellees.

FRANCIS H. KINNICUTT,
KENNETH GARDNER,
JOHN C. PRIZER,
Associate Counsel.

Appendix.

The moving papers upon which the appellee Harry Anderson endeavored to procure a modification of the order of reference so as to require the determination of the amount of the limitation fund under British law, included the following extract:

(See foregoing brief at pages 82, 83.)

"At the times herein mentioned there were in force as parts of what is known as the Merchant Shipping Act, the following statutes of the United Kingdom of Great Britain and Ireland, namely, 57 and 58 Victoria, chapter 60, sections 503 to 509, inclusive, August 25th, 1894, and amendments thereof, and 63 and 64 Victoria, chapter 32, sections 1 and 2 (2), August 6, 1900.

503. (1) The owners of a ship, British or foreign, shall not, where all or any of the following occurrences take place without their actual fault or privity; (that is to say),

(a) Where any loss of life or personal injury is caused to any person being carried in the ship;

(b) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the ship;

(c) Where any loss of life or personal injury is caused to any person carried in any other vessel by reason of the improper navigation of the ship;

(d) Where any loss or damage is caused to any other vessel, or to any goods, merchandise, or other things whatsoever on board any other vessel, by reason of the improper navigation of the ship;

be liable to damages beyond the following amounts; (that is to say)

(i) in respect of loss of life or personal injury, either along or together with loss of or damage to vessels, goods, merchandise, or other things, an aggregate amount not exceeding fifteen pounds for each ton of their ship's tonnage; and

(ii) in respect of loss of, or damage to, vessels, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage, * * *

(2) For the purpose of this section:

(a) (as amended by Chapter 48, Merchant Shipping Act, 1906, section 69.) The tonnage of a steamship shall be her registered tonnage with the addition of any engine room space deducted for the purpose of ascertaining that tonnage; and the tonnage of a sailing ship shall be her registered tonnage;

Provided that there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use which is certified under the regulations scheduled to this act with regard thereto.

(b) Where a foreign ship has been or can be measured according to British law, her tonnage, as ascertained by that measurement shall for the purpose of this section, be deemed to be her tonnage.

(c) Where a foreign ship has not been and cannot be measured according to British law, the Surveyor General of ships in the United Kingdom, or the chief measuring officer of any British possession abroad, shall, on receiving from or by the Court hearing the case, in which the tonnage of the ship is in question, such evidence concerning the dimensions of the ship as it may be practical to furnish, give a certificate under his hand stating what would in his opinion have been the tonnage of

the ship if she had been duly measured according to British law, and the tonnage so stated in that certificate shall, for the purposes of this section, be deemed the tonnage of the ship.

“(3) The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to vessels, goods, merchandise, or things as aforesaid arising on distinct occasions to the same extent as if another loss, injury, or damage had arisen.”

Extracts from Debates in Congress on Act of 1851.

Senator Hamlin, Chairman of the Committee of Commerce, which reported the bill, said (Cong. Globe, Vol. 23, page 332) :

“Besides, this bill conforms to what is the law of England. I hold that it is a consideration which must not be forgotten or winked out of sight, that while a great commercial power of the world has taken these liabilities from her commerce, *our commerce stands in the courts of the world upon a foundation different from hers.*”

Senator Davis, of Massachusetts, in speaking of the bill, said (Cong. Globe, Vol. 23, page 714) :

“I will only say, that it is the adoption of a system which has been several years in operation in England, with certain alterations merely, as I understand it, to adapt it to the affairs of this country, and nothing more. It is simply placing *our mercantile marine* upon the same footing as that of Great Britain. We are carriers side by side with that nation, in competition with them, and we cannot afford very well to give them any great advantage over us without affecting our interest very seriously.”

Senator Cass also said (same page) :

"I will detain the Senate but a moment. I was simply going to remark, that, as I understand this matter, the liabilities of ship-owners in foreign countries have been reduced, while those of *our own ship-owners*, if not actually increased, have been effectively so by the decision of the Supreme Court. Now, how are we to continue our commercial interest on a firm foundation unless we put *our ship-owners* on the same footing with those of other countries? Is there a more important matter than one like this, in which the interest of *our whole commercial marine* is at stake?"

Senator Hamlin said (Cong. Globe, Vol. 23, page 715) :

"That the English Government has changed the law, which is a very strong and established reason why we should *place our commercial marine* upon an equal footing with hers. Why not give to those who navigate the ocean as many inducements to do so as England has done? Why not place them upon that great theatre where we are to have the great contest for the supremacy of the commerce of the world? That is what this bill seeks to do, and it asks no more."

Mr. Underwood, who was opposing the bill, said (Cong. Globe, Vol. 23, page 716) :

"Then the argument is that we cannot compete with our great rival upon the ocean—with Great Britain—and that we must pass the first section of this bill in order to enable us to enter into competition with her. Well, sir, it ought to be shown—but that information has not yet been given us, though it may be in the hands of the Chairman of the Committee on Commerce (Mr. Hamlin), and he may be ready to give it to the Senate—but it

ought to be shown that if this bill goes into operation it will so operate as to reduce the freights *and enable us to compete* for the carrying trade with England; because, under the regulations which control the navigation of that country, they are now enabled to underwork us."

And also:

"It seems to me that we have a bill here of the most important character, affecting the great agricultural interests of the country, and, affecting these interests adversely and disadvantageously, for the purpose of benefitting the commercial interests, the mercantile interests, and the ship-owners of the country."

Senator Rantoul said (Cong. Globe, Vol. 23, page 718), speaking for the bill:

"Now, sir, the Senator from Kentucky has made one remark which I consider perfectly fair, and which I propose to apply to this question now before us. He says, how do we know this competition between our shipping and the shipping of other nations is going on disadvantageously to our shipping?—how do we know that they are enabled to underwork us, and how do we know that our shipping interests require this relief? When Great Britain discovered that her shipping required this relief, it was because she was afraid that other nations were underworking her; and what did she intend to do? She intended to increase the balance, and cause it to preponderate in her favor; and she intended to keep the advantage—and I do not complain of her; she had a perfect right to do so—she intended to enjoy the *advantages which her shipping had over our shipping*; and her acts, so far as they go, tended to give her shipping the *advantage of ours*. Now, are we to allow our

ship-owners to be subject to this old and onerous rule, when another is found to work more fairly there? and *are we to send our ships in competition with Great Britain under this disparagement?* The competition now, is a serious one, and your returns show it. Here is before me the table of clearances from our ports last year. The tonnage of American vessels is 2,632,000 tons, while the tonnage of foreign vessels is 1,728,000 tons, showing that that there was about three-fourths as much foreign tonnage as there is of domestic. They wish to underwork us. Why do these vessels enter our ports, bringing products which our American vessels might bring as well? Why do they carry away products that American vessels might carry away just as well, unless it is they can ship cheaper than we can? If they do not carry freight to precisely the same extent that we do, yet they employ three-fourths as much, and I think that their three-fourths is and should be a warning to us. It shows that there is a competition against which we ought carefully to guard; and in *removing this burden from the American shipping*, I think we do but an act of justice which is called for by the previous steps which Great Britain has taken, and called for, not only for the benefit of the ship-owner, but for the benefit of all those who will ultimately reap the benefit—that is, all who are benefitted directly or indirectly by the transportation of the freight, as well as the owner of the goods that are to be carried.”

Senator Badger, opposing the bill said at page 718:

“Can there be any reason for this interposition *in behalf of the ship-owners of the United States?*”

Senator Phelps, in behalf of the bill said at page 719 :

"We have been competing with Great Britain for the carrying trade, I may say of the world, for fifty years, and if we do not ourselves abrogate this law we will give her an advantage over our navigation, and permit our navigation to suffer under it."

Supreme Court of the United States

October Term, 1913.

No. 798.

IN THE MATTER
OF

THE PETITION OF THE OCEANIC STEAM NAVIGATION
COMPANY, LIMITED, FOR LIMITATION OF ITS
LIABILITY AS OWNER OF THE STEAMSHIP
TITANIC, OCEANIC STEAM NAVIGATION COM-
PANY, LIMITED,

Petitioner-Appellant,

against

WILLIAM J. MELLOR AND HARRY ANDERSON,

Claimants-Appellees.

MOTION FOR LEAVE TO FILE

A. GORDON MURRAY,

Proctor for Certain Claimants,

60 Wall Street,
New York City.

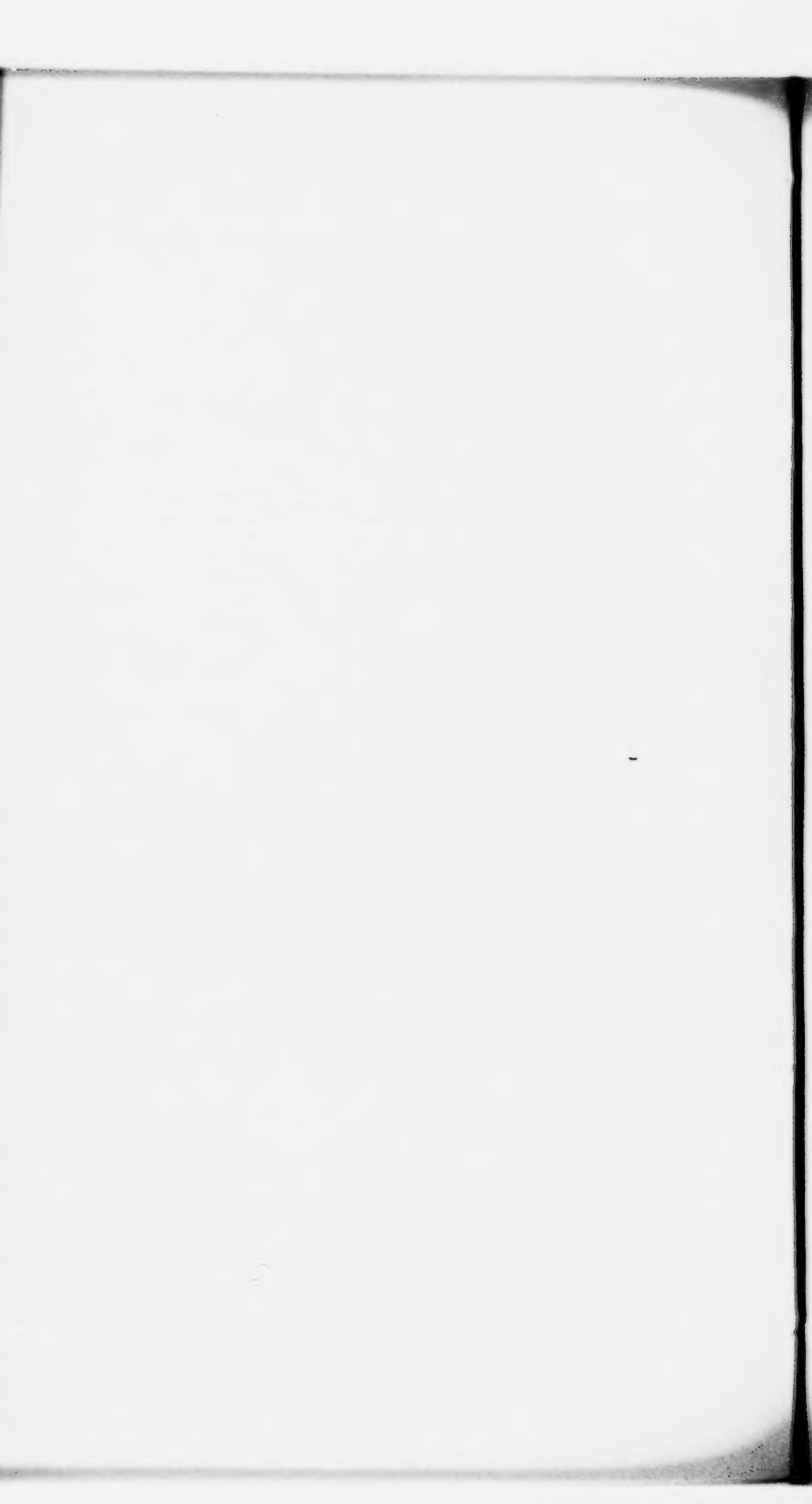
Office Supreme Court, U. S.

FILED

JAN 5 1914

JAMES D. MAHER

CLERK



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

IN THE MATTER

OF

The Petition of the OCEANIC STEAM
NAVIGATION COMPANY, LIMITED,
for Limitation of its Liability as
Owner of the Steamship TITANIC,
OCEANIC STEAM NAVIGATION COM-
PANY, LIMITED,

No. 798.

Petitioner Appellant,

WILLIAM J. MELLOR and HARRY
ANDERSON,

Claimants Appellees.

SIR:

PLEASE TAKE NOTICE that on Monday, the 5th day of January, 1914, I shall ask this Honorable Court for leave to file the annexed brief.

Dated, New York, December 19, 1913.

Yours, etc.,

A. GORDON MURRAY,

Proctor for Adele Nasrallah,
individually and as administra-
trix of the goods, chattels, and
and credits of Nicola Nasrallah,
deceased; for Anthony Mc-

Mahon, Honor McMahon, John McMahon, and Margaret McMahon, the father and mother and brother and sister of Martin McMahon, deceased; for Amy Frances Jacobsohn, individually and as executrix under the last Will and Testament of Sydney Samuel Jacobsohn, deceased; for Alice F. Christy; for Juli Christy; for Leontine Pauline Aubert, damaged claimants.

To:

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Petitioner-Appellant,
27 William Street,
Borough of Manhattan,
City of New York.

To:

MESSRS. HUNT, HILL AND BETTS,
Proctors for Claimants-Appellees,
165 Broadway,
Borough of Manhattan,
City of New York.

MESSRS. HARRINGTON, BIGHAM & ENGLAR,
Proctors for Intervening Claimants,
64 Wall Street,
Borough of Manhattan,
City of New York.

SUPREME COURT OF THE UNITED
STATES.

OCTOBER TERM, 1913.

IN THE MATTER

OF

The Petition of the OCEANIC STEAM
NAVIGATION COMPANY, LIMITED,
for Limitation of its Liability as
Owner of the Steamship TITANIC,
OCEANIC STEAM NAVIGATION COM-
PANY, LIMITED,

Petitioner-Appellant,

WILLIAM J. MELLOR and HARRY
ANDERSON,
Claimants-Appellees.

No. 798.

BRIEF FILED BY LEAVE OF COURT IN THE INTER-
EST OF CERTAIN DAMAGE CLAIMANTS NOT PARTIES TO
THE APPEAL.

A. GORDON MURRAY FOR SUCH CLAIMANTS.

This appeal to the Court below draws in ques-
tion the right of the petitioner to seek relief in
the District Court in a proceeding for limitation
of liability from claims arising out of the loss
of the steamship *Titanic* and this memorandum is
sought to be submitted by permission of Court
on behalf of a group of claimants not parties to
the appeal. They had in due time filed their
claims with the Commissioner duly appointed to
receive claims, and their joint answer designated
as the answer of Adele Nasrallah, individually

and as administratrix of Nicola Nasrallah, deceased; Anthony McMahon, Honor McMahon, John McMahon, and Margaret McMahon, the father and mother and brother and sister of Martin McMahon deceased; Amy Frances Jacobsohn, individually and as executrix under the last Will and Testament of Sydney Samuel Jacobsohn, deceased; Alice F. Christy, Juli Christy, and Leontine Pauline Aubart. A copy is annexed.

The claims of Adele Nasrallah and the McMahaons, as aforesaid, are for the loss of the lives of Nicola Nasrallah and Martin McMahon respectively. The remaining claims are for loss of baggage and personal effects and injuries. The claims for loss of life were made pursuant to the English statute known generally as Lord Campbell's Act, and that statute is duly pleaded in the claims and answer as filed.

The answer, furthermore, beside setting out the causes of action and the damage complained of, allege also the English statute of limitation of liability and the allegation is made that the petitioner's liability is to be measured by that statute, which, on information and belief is stated to be £15 per ton of the registered tonnage of the steamship *Titanic*.

The English law is, therefore, a fact to be proved and shown to apply.

The Scotland, 105 U. S., 24.

Cuba R. R. Co. *vs.* Crosby 222 U. S., 473.

La Bourgogne, 210 U. S. 95.

The claimants came into the Court pursuant to its monition, citing and inviting all persons having a claim or suit against the petitioner arising out of the loss of the *Titanic* to so file their claims.

The right to claim the right of limitation of liability was established in this country pursuant to the Act of March 3rd, 1851. It had for a number of years before that statute been asserted that the right existed under the general maritime law. When the Act was passed there were substantially similar statutes in force in Great Britain.

The statutory provisions are now contained in Sections 4283 and 4289 of the United States Revised Statutes. Of the eight sections only three have any bearing on the question now before the Court, and are as follows:

“SEC. 4283. The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, or any property goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner of such vessel, and her freight then pending.

“SEC. 4284. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the

sum for which the owner of the vessel may be liable among the parties entitled thereto.

"SEC. 4285. It shall be deemed a sufficient compliance on the part of such owner with the requirements of this title relating to his liability for any embezzlement, loss, or destruction of any property, goods or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease."

In 1872. in *Norwich Company v. Wright*, 13 Wall, 104, the Supreme Court fully considered the statute and said that they had no doubt that District Courts as Courts of admiralty and maritime jurisdiction had jurisdiction of the matter and for the purpose of aiding parties in this respect and to facilitate proceedings in District Courts the Court had prepared some rules which should be announced at an early date. Said rules were promulgated in May 6th, 1872, 13 Wallace XIII, and were amended January 26th, 1891, 137 U. S., 711, and are known as Admiralty Rules 54 to 57. Those material are:

"54. When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter, or thing, loss, damage or forfeiture, done, occasioned or incurred, with-

out the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the Act of March 3, 1851, entitled 'An Act to limit the liability of shipowners and for other purposes,' now embodied in Sections 4283 to 4285 of the Revised Statutes, the said owner or owners shall and may file a libel or petition in the proper District Court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said Court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into Court, or for the giving of a stipulation, with sureties for the payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight to a trustee to be appointed by the court under the fourth section of said Act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice reserved through the post office, or other-

wise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners, in respect to any such claim or claims."

Promulgated May 6, 1872. 13 Wall. XII. Amended January 26, 1891. 137 U. S., 711.

"56. In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage or injury (independently of the limitation of liability claimed under said Act), provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability, under the said Act of Congress, or both.

Promulgated May 6, 1872. 13 Wall., XIII.

The proceedings in this case in the District Court were precisely as directed in the rules and the claimants have also proceeded precisely as allowed and provided in the rules, and they have, by their claims and answers sought to avail themselves of the rights open to them under the statutes and under Rule 56.

The Supreme Court has held that claims for loss of life are within the statute. *Butler v. Boston Steamship Co.*, 130 U. S., 555, and *La Bourgogne*, 210 U. S., 95, p. 140.

Upon the filing of the petition the jurisdiction of the District Court to hear and determine every claim in that proceeding became exclusive.

The San Pedro, 223 U. S., 365, p. 372.

In the Scotland, 105 U. S., 24, the Supreme Court was called upon to consider the question of the application of these statutes to foreign ships and in the course of a long opinion in a decision which has practically assumed the proportions of a classic, at pp. 29-30, Judge Bradley said:

"Hence, if a collision should occur in British waters, at least between British ships, and the injured party should seek relief in our Courts, we would administer justice according to the British law, so far as the rights and liabilities of the parties were concerned, provided it were shown what that law was. If not shown we would apply our own law to the case. In the French or Dutch tribunals they would do the same. But, if a collision occurs on the high seas, where the law of no particular State has exclusive force, but all are equal, any forum called upon to settle the rights of the parties would *prima facie* determine them by its own law as presumptively expressing the rules of justice; but if the contesting vessels belonged to the same foreign nation, the Court would assume that they were subject to the law of their nation carried under their common flag, and would determine the controversy accordingly. If they belonged to different nations, having different laws, since it would be unjust to apply the laws of either to the exclusion of the other, the law of the forum, that is the maritime law as received and practiced therein, would properly furnish the rule of decision" (pp. 29-30).

So the position believed to have been stated by repeated decisions and extended practice of the court has been that the filing of a simple petition stating the facts and circumstances in the District Court was sufficient to move the court to assume jurisdiction of a collision or disaster of whatever nature, giving rise to loss or damage in respect to which loss or damages, compensation was claimed.

Where such losses occurred under circumstances where it was conceived that the particular law of the land in which the court called upon to adjudicate between the parties did not apply, it has been pointed out that the court would consider by which law the rights of the respective parties were to be adjudged, and it is a fundamental principle that where the law of the land or forum does not apply it is perfectly competent for the court to judge the parties by the law that does apply, provided it is shown what that law is and that it does not work injustice to any particular party to do so.

The proceeding in the court below is a proceeding in Admiralty for the prevention of a multiplicity of suits, as well as to award limitation of liability, if the owner is entitled to it.

Oregon R. R. and Navigation Co. *v.* Balfour, 179 U. S., 55.

Dowdell *v.* U. S. District Court, 139 Fed. Rep., 444.

It has been denominated an equitable action. In *Re Morrison*, Petitioner, 147 U. S., 14, p. 34.

Not in a sense inconsistent with the Admiralty jurisdiction, however.

Oregon, etc., *v.* Balfour, *id.*

A Court of Equity will do full justice.

Camp *v.* Boyd, 229 U. S., 530, p. 551.

Can there be any doubt then that for over sixty years in this country proceedings of the nature of those at bar have been cognizable in the admiralty courts of the United States and have been maintained and adjudicated therein and persons have been punished for contempt for disobeying orders made in such proceedings.

So also, Mr. Justice Holmes, in

Cuba R. R. Co. v. Crosby, 222 U. S., 473,
at page 479.

“We repeat that the only justification for allowing a party to recover when the cause of action arose in another civilized jurisdiction is a well founded belief that it was a cause of action in that place. The right to recover stands upon that as its necessary foundation. It is part of the plaintiff’s case, and if there is reason for doubt he must allege and prove it. The extension of the hospitality of our courts to foreign suitors must not be made a cover for injustice to the defendants of whom they happen to be able to lay hold.”

The doctrine of *Stare decisis* is a wholesome doctrine.

Vale v. Arizona, 207 U. S., 201, p. 205.

The law of the flag in a locality which recognizes no other authority must be the law of the case.

The petitioner has sought relief in our courts and claims under our laws thus to escape the heavier liability that its own law imposes, and the District Court below is the proper tribunal in the first instance to determine that question.

It has been sought to raise the question of the applicability of the English law by exceptions to the petition which is in the nature of a demurrer.

It should be borne in mind, however, that the proceeding is still pending, not only as to the Nasrallah claimants, but for many hundreds of others and if the petition is not sufficient as to Mellor and Anderson and the petition as to them dismissed it is quite conceivable that it might be claimed that it was insufficient for any purpose and the proceeding sought to be discontinued or dismissed which would leave these claimants without a remedy, not through any fault of their own, but by reason of the petitioner's own act and the action of the District Court in assuming to exercise the jurisdiction which has been the established practice of the court for sixty years.

We submit that this Court's answers to the questions certified by the Honorable the Circuit Court of Appeals for the Second Circuit should be:

To Question A—Answer, yes.

To Question B—Answer, yes.

To Question C—Answer. It will enforce the law that it finds to be applicable, provided it is shown that a different law from that of Sections 4283, 4284, 4282 U. S. Revised Statutes is applicable.

Respectfully submitted,

A. GORDON MURRAY,
Proctor for Adele Nasrallah
and others, damage claimants.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of the OCEANIC STEAM
NAVIGATION COMPANY, LIMITED,
Owner of the steamship *TITANIC*,
in a Cause of Limitation of Lia-
bility, Civil and Maritime.

To the Honorable the Judges of the United
States District Court for the Southern Dis-
trict of New York.

The answer of Adele Nasrallah, individually and as administratrix of the goods, chattels and credits of Nicola Narsallah, deceased; Anthony McMahon, Honor McMahon, John McMahon, and Margaret McMahon, the father and mother and brother and sister of Martin McMahon, deceased; Alice F. Christy, Juli Christy, and Leontine Pauline Aubert, having duly filed claims herein against the above-named petitioner with Alexander Gilchrist, Jr., Esq., the commissioner appointed herein to take proof of claims, to the petition of the Oceanic Steam Navigation Company, Limited, owner of the steamship *Titanic*, in a cause of limitation of liability, civil and maritime, alleges, on information and belief, as follows:

FIRST.—They admit the allegations of the first article of the petition except that they have no knowledge or information sufficient to form a belief as to whether the petitioner was a registered

company, or whether the said steamship *Titanic* was built by Harland & Wolff, Ltd., but they believe that she was built at the yards of the said Harland & Wolff, Ltd., in Belfast, Ireland, and except especially

They deny that the said steamship *Titanic* was in all respects seaworthy as alleged in the said first article of the petition and they deny that it is material to these claimants whether the petitioner had used due diligence to make the said steamship seaworthy or not.

SECOND.—They admit the allegations of the second article of the petition except that they deny that the said steamship *Titanic* was fully or efficiently officered, manned, equipped and supplied and they also deny any knowledge or information sufficient to form a belief as to the character or nature of the iceberg with which the said *Titanic* collided.

THIRD.—They admit that the survivors were rescued by the steamship *Carpathia* but they have no knowledge or information to form a belief as to any other of the allegations made in the third article of the petition, and deny the same.

FOURTH.—They deny the allegations of the fourth articles of the petition.

FIFTH.—They have no knowledge or information sufficient to form a belief as to the allegations in the fifth, sixth and seventh articles of the petition and deny the same, except they believe the *Titanic* to have been a total loss.

SIXTH.—And the claimants further answering the petition upon information and belief allege:

(1) That the loss and damage occasioned to them as stated in their respective claims duly filed herein as hereinbefore mentioned, by the collision of the steamship *Titanic* with an iceberg while on the voyage mentioned in the petition herein was caused by the fault and negligence of the petitioner herein, the Oceanic Steam Navigation Company, Limited, its agents and servants, in that the said steamship *Titanic* was being navigated imprudently under the circumstances, and was proceeding at a high, dangerous and immoderate speed in a region known to be infested with ice and icebergs, and furthermore, that she was being so navigated with the knowledge of owner, the petitioner herein.

(2) That the said petitioner was privy to the loss and damage occasioned these claimants when it allowed said steamship to sail from Southampton in England and Cherbourg in France and Queenstown in Ireland, after taking on mails and passengers, and to pursue a course infested with ice at that season of the year and not to give proper directions to have authorized and enabled those in charge of the navigation of the said steamship *Titanic* to pursue a safe course under the circumstances, but on the other hand the said master was required to hold the course on which the said vessel was lost.

Repeating and reiterating the denials heretofore made herein to the allegation of the petition these claimants further affirmatively allege:

(3) That the loss or damage occasioned to these claimants was not without the privity of the petitioner herein, in that when the said steamship *Titanic* sailed, as aforesaid, she was not a seaworthy vessel either in fact or in law, and was not built and equipped as prudence required in a vessel of her size and class and power,

and was not fitted and suited to engage in the trade in which she was engaged, (a) in that the said steamship *Titanic* did not have an inner hull or skin of plating which the state of the art of shipbuilding had proved to be requisite in vessels of her power and class, and (b) in that she was not provided with bulkheads sufficient to sub-divide the said vessel into compartments which would maintain her buoyancy in case of the overflow of water due to an injury from collision with either ice or with a derelict of the sea or another vessel, (c) in that the said steamship *Titanic* was not equipped with bulkheads, or steel or other watertight decks sufficient to retain an inflow of water in case of collision as aforementioned within the compartment or compartments in which the injury might have occurred.

That the said steamship *Titanic* was not equipped with watertight compartments sufficient to confine an inflow of water within the compartment in which she might have received an injury, in such wise as would maintain at all times the buoyancy of the vessel: and that the said steamship *Titanic* in the particulars stated was not equipped with bulkheads, decks, or compartments sufficient at all times and under all circumstances to confine within limited areas an inflow of water from an injury below the water line, or otherwise, nor to prevent the overflow of the water penetrating into other and uninjured compartments, but, on the other hand, was constructed so as to allow water from one compartment to overflow into another and another, thus destroying the buoyancy and safety of the vessel in case of collision, and that in the case of the *Titanic* the water did so overflow and overwhelm the vessel and cause her to fill and sink.

That the petitioner, as owner of the said steamship *Titanic* was in duty bound to provide a ves-

sel in all respects seaworthy for the voyage, and a vessel fit and sufficient at all times to meet the exigencies of a voyage such as that in which the *Titanic* was engaged at the time of her loss and the resulting losses to these claimants, and these claimants charge and allege that the said steamship *Titanic* was not so fit and sufficient by reason of the allegations herein made.

SEVENTH.—For a further answer and defense to the petition these claimants allege further that the petitioner is not entitled to a limitation of its liability if this Court should decide it otherwise so to be, unless and until it deposits in the registry of this Court an amount equal to £15 per gross ton of the said steamship *Titanic*, which claimants allege was and is the measure of its liability under the laws of the United Kingdom of Great Britain and Ireland.

That under the laws of the United Kingdom of Great Britain and Ireland a shipowner claiming the right to limitation of his or its liability as such shipowner in cases involving the loss of lives, or personal injuries by reason of the fault or negligence of the said owner, his or its agents or servants, and having been occasioned or incurred without the knowledge or privity or actual fault of such shipowner, is answerable in damages to an amount not exceeding the sum of Fifteen pounds (£15) per ton of the tonnage of the vessel in respect to which the proceeding is pending.

EIGHTH.—That the claimants as aforesaid have duly made and filed their claims in writing, under oath with the commissioner appointed herein to receive such claims, and such claims respectively are hereby referred to and made a part hereof.

NINTH.—All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court herein.

WHEREFORE, the claimants herein pray that the Court will decree that the collision and loss at sea of the said steamship *Titanic* was due to the fault and negligence of those in charge of her navigation.

That such fault and negligence was done with the fault or knowledge of the petitioner.

That the loss and damage of these claimants was done, occasioned and incurred not without the knowledge or privity of the petitioner, or its actual fault.

That the petitioner is not entitled to a limitation of its liability as prayed for in the petition, or otherwise.

That these claimants may be awarded their damages as indicated by the claims heretofore filed with the Commissioner herein, and duly proved according to law, together with interest and costs out of the fund in the hands of the Trustee herein or generally for any deficiency thereof, or that they may have such other and further relief as may be just, and the court will further decree that the petitioner, unto the end that the facts may appear to the court, answer the interrogatories annexed to this answer, within the time allowed by the rules and practice of this court.

A. GORDON MURRAY,
60 Wall Street,
New York City.

Proctor for Adele Nasrallah, individually and as administratrix of the goods, chattels, and

credits of Nicola Nasrallah, deceased; for Anthony McMahon, Honor McMahon, John McMahon, and Margaret McMahon, the father and mother and brother and sister of Martin McMahon, deceased; for Amy Frances Jacobsohn, individually and as executrix under the last Will and Testament of Sydney Samuel Jacobsohn, deceased; for Alice F. Christy; for Juli Christy; for Leontine Pauline Aubert, damaged claimants.

SOUTHERN DISTRICT OF NEW YORK, ss.:

A. GORDON MURRAY, being duly sworn, says that he is proctor in this proceeding for the above-named claimants, that such claimants are all absent from this district and are each more than one hundred miles from the City of New York and the Southern District of New York, and that deponent has been requested and is authorized to act for the claimants herein; that he has read the claims of the respective claimants and the foregoing answer and knows the contents thereof and on information and belief that the matters therein stated are true; that deponent's sources and means of information are letters from the respective claimants and their solicitors, and from communications and papers in his possession, which he believes to be true and trustworthy.

A. GORDON MURRAY.

Sworn to before me this }
day of April, 1913. }

(Seal) JOHN F. CLANCEY,
Notary Public No. 47,
New York County.

OFFICE OF THE CLERK OF THE SUPREME COURT
FILED
FEB 9 1914
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 798.

IN THE MATTER OF THE PETITION OF THE OCEANIC STEAM
NAVIGATION COMPANY, LIMITED, FOR LIMITATION OF ITS
LIABILITY AS OWNER OF THE STEAMSHIP "TITANIC."

THE OCEANIC STEAM NAVIGATION COMPANY,
LIMITED,

Petitioner-Appellant,

vs.

WILLIAM J. MELLOP AND HARRY ANDERSON,
Claimants-Appellees.

THE TITANIC.

TRANSLATION OF THE OPINION IN THE CASE OF THE
STOKESLEY, FILED BY APPELLEES PURSUANT TO
LEAVE GRANTED BY THE COURT.

FREDERICK M. BROWN,
MAURICE LEON,

Of Counsel for Appellees.

HUNT, HILL & BETTS,

Proctors for Appellees.



Supreme Court of the United States

No. 798, OCTOBER TERM, 1913

IN THE MATTER

of

The petition of the Oceanic Steam Navigation Company, Limited, for a limitation of its liability as owner of the steamship TITANIC

OCEANIC STEAM NAVIGATION COMPANY,
LIMITED

Petitioner-Appellant

VS.

WILLIAM J. MELLOR and HARRY
ANDERSON

Cluimants-Appellees

TRANSLATION OF THE OPINION IN THE CASE OF THE STOKESLEY, FILED BY APPEL- LEES PURSUANT TO LEAVE GRANTED BY THE COURT.

The following translation of the opinion of Judge Letellier is from the report of the decision contained in 1905 Darras, Droit International Privé 114, 118:

118*]

"The Stokesley Steamship Company, Limited, whose principal office is at Cardiff, brings before you for review the decree rendered 28 January, 1903 by the Court of Appeals of Rouen against it and in favor of the Compagnie Générale Transatlantique upon a question of collision liability.

* Marginal numbers refer to the original paging of 1905 Darras, Droit International Privé.

On October 22, 1910, the English steamer Stokesley, while navigating in the port of Havre, collided with an English vessel, the Shagbrook, which sank shortly afterwards with its cargo.

An action was promptly instituted before the High Court of Justice of London (Admiralty Division) and by a decree of 19 May, 1901, that court held that the collision had been caused by the fault of the captain of the Stokesley and the court condemned the owners of that vessel (liable for the negligence of their captain) in damages for the benefit of the persons suffering losses. Nevertheless, as the English law contains no provision equivalent to our Article 216 of the Code of Commerce,* but fixes the liability of shipowners at £15 sterling per register ton in case of death due to collision and at £8 in case of personal injuries or other losses; the liability of the owners of the Stokesley was limited to £7,491, 5 shillings, 7 pence. A proceeding was begun in London for the apportionment of that sum and the interested parties were invited to submit proof of their claims.

The Compagnie Transatlantique, owner of 1,553 tons of coal loaded on board the Shagbrook declined to become a party to that proceeding; it claimed the benefit of the French laws governing damages for a tort committed in a French port and on June 22nd, 1901, it sued in the Tribunal of Commerce at Havre Captain Touzel, captain of the Stokesley, and the owners of that ship for the *full value of the coal* lost by reason of the collision.

* Article 216, the statute of limitation of shipowners' liability, in force from 14 June, 1841, to the present time (re-enacted 12 August 1885) reads as follows:

" Art. 216. *Every shipowner* is civilly liable for the acts of the captain and is bound by the contractual engagements entered into by the latter in what relates to the ship and to the voyage. In every case, the former is entitled to free himself from the above mentioned obligations by the abandonment of the ship and of the freight. The right of abandonment is not accorded to a person who is at once captain and owner or part-owner of the ship. When the captain is only a part-owner, he will be liable for contracts entered into by him and relating to the ship and to the voyage, only in the proportion of his interest."

The previous wording, that of the Code Napoleon, was:

" Art. 216. *Every shipowner* is civilly liable for the acts of the captain in so far as they relate to the ship and to the voyage. His liability ceases by the abandonment of the ship and of the freight."

119] The cause to which the collision was legally due was not open to controversy, nor was the negligence of Captain Touzel, these matters having been adjudged by the English courts. The controversy was therefore restricted to the question of the consequences of that negligence, in respect of the liability of the owners; and by judgment of May 27th, 1902, applying Article 216 of the Code of Commerce, the Stokesley Steamship Company and Captain Touzel were jointly ordered to pay to the Compagnie Transatlantique the value of the 1,553 tons of coal as ascertained by the market price of Cardiff coal at Havre on the day of the collision. . . .

Upon the appeal interposed by the Stokesley Company and Captain Touzel, the Court of Rouen rendered the following decision of affirmance.*

120] The honorable author of the brief for plaintiff in error admits that it is proper to have recourse to the law of the country where the act was done in order to determine what the legal aspect of the collision must be and what persons must bear the loss. In particular, he does not contest the application of the French law to the tort (quasi delit) committed by Captain Touzel. But he proceeds by contending that the shipowners have committed no tort; that they are not responsible except by virtue of the commission or authority (mandat) which they gave their captain; that this commission, which did not contemplate the doing of a tortious act, was granted by a foreigner to a foreigner within the dominion (sous l'empire) of the law common to them; and that the decree appealed from erred in holding that this commission (mandat) is, as regards the Compagnie Transatlantique *res inter alios acta*, and in holding that the collision is not to be considered as being a consequence of that commission.

It is precisely because the collision took place out-

* Here Judge Letellier quotes the somewhat lengthy decision of the Rouen Court of Appeal.

side the scope of any captain's commission that *the liability of the shipowner must be governed by the very same law as that which governs the liability of the captain*. On the other hand, the argument is one of slight importance that the shipowner, in profiting by the good navigation of his captain, should in equity also bear the consequences of the faults committed by the latter, as regards third persons. What is involved here is a question of pure law, responsibility for the act of another. Now, the shipowner may be proceeded against only on account of the selection made by him of his captain, that is to say, on account of the contract of employment. Hence we always come back to the question of the captain's commission and it is this commission also, which the victims of the collision invoke as the foundation of their claims against the shipowner.

It is not to be understood that the consequences of a contract made in England between a shipowner and an English captain should be determined by a law other than the English law.

In the premises, the High Court of Justice of London gave judgment ordering the owners of the *Stokesley* to pay £8 per ton for the value of their ship. The owners made the required payment and the Court of Appeal of Rouen, not restricting itself to this solution, requires the owners to abandon their entire ship, if they do not wish to recompense the *Compagnie Transatlantique* in respect of the value of its coal. It is not just that the liability of shipowners should thus vary according to the nationality of persons damaged.

The Court of Appeal of Rouen fully appreciated all this; giving expression, in its decision, to its regret that the law of the flag, which for the most part is merely that of the country where the commission is granted, cannot here be applied. The petition for review, on the contrary, deems the present case to be a proper one for the application of this principle. As between different systems of

laws, that one must be chosen which accords best with justice and equity.

121] In this case, the legal foundation of the assertion of liability on the part of the shipowner being the contract which he has entered into with his captain, this contract is governed by his national laws, that is to say, by the English law. Moreover, this principle of decision, bringing a greater degree of fairness (*sincérité*) into international relations, will enable shippers as well as shipowners to measure with exactness in advance, in accordance with the law of the ship's flag, the extent of the responsibility, which they may enforce or incur.

OBSERVATIONS.—The contention of the petition for review comes perhaps a little late. It might have been entertained after the judgment of 4 November, 1891; it can no longer be entertained after that of 18 July, 1895 ([1895] 1 *Sirey*, 205), where, the honorable advocate for plaintiff in error, notwithstanding his efforts, saw it irrevocably rejected.

We shall examine the question, nevertheless, first, because it is an interesting one, and secondly, because we are unwilling to reject the doctrine relied on in the petition for review by a simple denial.

When a collision takes place between foreign ships in French territorial waters, should the liability of the shipowner like that of the captain, be governed by the principle laid down in Article 3* of the civil code?

This is the entire question at issue in this case. The writ of error concedes the application of Article 3 to the captain who commits a tort in French waters; but it denies its application to the shipowner who, it is contended, remains a stranger to this tort. . . .

What shall be the extent of the liability of the

*This article from the "Preliminary Title" of the Civil Code provides that: "Laws of police and public order are binding upon all who live in the territory."

shipowners? To some degree, the question is new and only began to be discussed in recent years.

M. de Valroger does not treat of it. In his *Traité de Droit Maritime* published in 1883 (Vol. I, section 278), speaking of the shipowner's liability for *contracts* entered into by the captain, he expresses the opinion that "when the question is as to the extent to which the captain may bind the shipowner, the solution depends entirely upon the scope of the captain's commission (mandat) and, accordingly, it is the law of the flag, which must govern". When Valroger then studies the special subject of *collision* and examines the case of a collision, either between foreign vessels of the same nationality or between foreign vessels of different nationalities (Vol. V, p. 145), he applies, in the first case, the national law of the two ships and in the second case the *lex fori*, that is to say, that of the country where the court sits before which the case is brought. But he does not examine the question whether the consequences of collision as regards the liability of captains are different from their consequences as regards the liability of shipowners.

122] When M. Desjardins in his second volume (Sec. 282) considers what the courts must hold to be the system of laws governing the shipowner as regards contractual obligations assumed by the captain, he naturally expresses the opinion that "in default of an express agreement, the law of the country where the captain's commission (mandat) is granted determines the powers of the agent and accordingly up to what point, the principal is obligated." But M. Desjardins is still speaking only of "engagements," that is to say, of contracts made by the captain, and, as is expounded by M. Laurent (7 Civil International Law, 79) "in quasi-contracts, as in contracts, the nationality of contracting or quasi-contracting parties is a material factor; while in the case of offenses and torts, the nationality of the

person committing the wrongful act is wholly immaterial".

Under these authorities, therefore, no progress in solving our question is attained and it still remains to be determined whether in matters of collision, that is to say, of tort, the responsibility of the shipowner shall be governed by a code of law different than that which is applicable to the captain.

In the examination which he has made of the question (Vol. 5, Section 1121), the thought does not seem to have occurred to M. Desjardins that a distinction might be made. He expresses himself as follows:

"Divergence between enactments on the subject of collisions have brought about conflicts of law as to what persons must ultimately bear the loss sustained or as to the formalities to be complied with and the limitations of time for suit to be observed by the persons sustaining losses in order to preserve their right to damages . . ." In accordance with what system of laws should the liability be fixed? One can readily understand the importance of the question. Certain laws, like the Spanish code, do not charge the shipowner with liability for a collision caused by the negligence of the captain and sailors. Others, such as the French code, are designed to have the loss borne jointly and equally by the ships which caused and suffered that loss if there be doubt as to the causes of the loss; while according to most maritime systems of legislation, all loss is treated as resulting from chance if it be not established that it is due to negligence. What system of laws is to be applied? A distinction must be made.

"First hypothesis—Collision in territorial waters.

"The territorial law must be applied. Mr. Lyon-Caen, himself, who clings in most cases to the law of the flag, considers the bearing of the losses caused by collision as a legal obligation. In order" he continues "to determine what legal obligations arise by reason of an act, it is necessary to look to the law of

the country in whose territory the act in question is done " . . .

123] The eminent author (Desjardins) declares next (p. 117) that in spite of the English law which exonerates the owners of ships in certain cases, "the English judge, as regards collisions occurring in English waters, even between foreign vessels, is constrained to apply the territorial law, not only by the principles of *jus gentium*, but also by the act of 29 July, 1862, Article 57". He adds that according to a judgment of the Tribunal of Commerce of Antwerp of 28 July, 1863, "if the collision occurs in Belgian waters, it is the Belgian law which must be applied as to the very matter of the existence of the tort and as to the *consequences* which result therefrom, in a word as to all that relates to substantive rights". He announces in conclusion that this very *tribunal of Antwerp*, 6th June, 1895, *applied the law of Holland* to a collision which took place in Dutch territorial waters".

Nothing in this entire passage permits the supposition that the learned magistrate entertains the idea of a distinction between the liability of the shipowner and that of the captain.

It was only in stating his conclusions which preceded your decision of 4 November 1891 ([1892] 1 Sirey, 72; [1892] 1 Dalloz, 401) that Mr. Desjardins believed himself called upon to point out the possibility of a difference between the direct, and the indirect consequences of a collision. In any event, he did not solve this question. Moreover, he had no occasion to do so; for the question for decision in that case was not, what was the actual extent of the liability of the owner of the ship in fault for the collision (*navire abordeur*), but whether that shipowner, of English nationality, could take advantage of the right of abandonment.

Nor does M. Dalloz in his supplement (*Droit Mar-*

itime 5th vol., section 1306) consider the question in two aspects.

"Certain laws," says he, "depart from the rules embodied in French legislation as regards the liability of the shipowner for the faults of the captain . . . According to what rules, should such conflicts be settled? Three hypotheses may be presented.

"First. The collision takes place in French or foreign territorial waters. It is generally decided that the territorial law will be applied; the law of the country where the act is done must alone suffice to determine the obligations resulting therefrom. The decisions of Belgian courts are well settled to that effect" . . .

Messrs. Lyon-Caen and Renault are the first who have drawn a distinction between the liability of the captain and that of the shipowner.

After having declared in Vol. 6 of their treatise on commercial law published in 1896 (at sections 1047 and 1048) that "as regards the law to be applied to solving the question of ascertaining who shall bear the losses caused by a collision, an important distinction must be made according to whether it took place in interior waters of a country or on the high sea or in territorial waters either of France or of a foreign country" and that "when the collision takes place in French waters, the French law must be applied whatever be the nationality of the ships", they add (Section 1052) this passage:

"The question of what law must be applied to determine *what persons are liable* for the losses caused by a collision is an entirely distinct question from that of ascertaining what law must be applied to determine *the extent of the liability of shipowners* by reason of faults of captains to which the collision is due. The latter is a question relating to the consequences of the contract whereby the shipowner provides for the command of the

same, not a question of collision. This clearly appears from the fact that the same question arises concerning all acts, legal or illegal, of the captain. It has previously been conceded (Vol. 5, Section 269 on the subject of the captain's engagements) that the extent of the liability of the owner of a ship is determined in accordance with the law of the flag. It follows particularly that the extent of the liability of the owner of a ship by reason of a collision having taken place in French waters is not necessarily governed by French law, although reference must be made to that law to determine who must bear the losses caused by this collision."

The theory is very clear. Unfortunately, *this solution has never been adopted by the courts*. Neither Messrs. Lyon-Caen and Renault nor the counsel for the plaintiff in error in the case at bar, were able to cite a single decision of a court sanctioning it and your decisions are to the contrary.

Your civil chamber has rendered three decrees which deal with the question more or less closely.

In a first decree of 16 May, 1888 ([1891] 1 Sirey 509; [1888] 1 Dalloz 305) damages were claimed for the illegal arrest of a Swedish ship brought about at New York by a French captain who charged that vessel with having collided with him in American waters. Your decision was that the loss resulting from such tort must be adjudicated "by the Court of Appeals of Paris in accordance with the principles of American law". Your reasoning, therefore, was that the tort committed in American territory was to be dealt with in accordance with the law of the place, not the law of the nation of the person who committed it.

On November 4, 1891, in the *Apollo* case, your civil chamber, as pointed out by the brief for plaintiff in error, which makes of it the sole basis of its contentions, applied the law of the captain's commission (mandat), stating that "the principle

of the liability to which Wilson, Son & Co. (the owners of the ship in fault for the collision) were subjected, arose exclusively from the authority conferred by them upon their captain, that the determination of the case as regards the shipowners must turn upon the existence and the legal consequences of the authority thus committed to the captain and that therefore such determination must necessarily be sought in the law with reference to which, this contract was made and which alone could serve to determine the extent and the consequences thereof". But this principle was stated by you only concerning a collision which took place on the high sea in the absence, as is expressly stated by the decree, "of a territorial law having compelling force". It was necessary, indeed, to find some ground of decision in such a case, and this solution of the problem, which was, moreover, keenly criticized in France and abroad, confined itself to ascertaining whether an English shipowner could claim the benefit of the right of abandonment in exoneration of liability.

In fact, the question, in the form in which it is now presented, has not been disposed of by your civil chamber, except by the decision of 18 July 1895 ([1895] 1 Sirey 305; [1897] 1 Dalloz 585) announced in the opinion of M. Durand and in conformity with the conclusions of M. Desjardins. The case involved a collision happening on the Seine between French and foreign vessels; and the English owner of the vessel in fault for the collision (navire abordeur) asserted the right to free himself from liability by an abandonment of his vessel.

"Whereas," as you said, "it is unquestionable, in point of fact, that the French vessel *Adèle* and the Swedish steamer *Zeus* were run down in the Seine below Rouen, 21 January, 1892, by the English steamer *Fanny* and that the collision occurred through the fault of the captain of the last-mentioned

vessel; and whereas the act giving rise to the litigation was therefore a tort, committed in the territorial waters of France, falling as such, according to the terms of the first paragraph of Article 3 of the Civil Code, within the application of French laws, whatever be the nationality of the three vessels; and whereas *no distinction* can, *in this regard*, be made between the captain of the Fanny, the immediate wrong-doer and the ship-owners who placed him in control of that vessel and who in their very capacity as principals were civilly liable for his acts, as regards third persons "

- 125] In the second part of your judgment, your civil chamber declares that, in commercial matters, foreigners may take advantage of the same provisions of law as citizens and it holds the owners of the Fanny entitled to free themselves from liability by abandonment.

Can it be said that this solution which, for us, cuts off all dispute, since it places on the same plane the direct author of the damage and those who are only civilly liable therefor, is in conformity with justice and equity, as the petition for review contends that it must be shown to be?

It seems to me that this can readily be demonstrated.

In the first place, how can it really be explained that a single occurrence, the collision, should give occasion for the application of two different laws; that of the place where the tort was committed, the territorial law (*statut réel*), and that of the person civilly liable, the national law of the person (*statut personnel*)?

The laws of police and of safety are obligatory upon all who inhabit the territory. These laws govern everything that affects the safety of persons and property. They extend, as M. Desjardins remarked in his conclusions of 1891, "to enactments, even civil enactments, concerning collisions" and since

every act that does injury to persons or property implies—to follow the expression of M. Laurent—"an offense (*lésion*) against public order in the country where it is done, the statute which governs it, is on that account a territorial statute. The action for damages consequent upon this act does not spring from an agreement, but from the law which has under its protection the injured persons and property. How can the protection of this law vary according to whether recourse is had against the direct author of the wrong or against the one liable in damages?

If the theory expressed in the writ of error were accepted, this protection would be rendered illusory most of the time, for the actual wrongdoer, the captain, will be often insolvent; the shipowner alone can offer to sufferers the compensation due them.

The principle laid down in Article 3 of the Civil Code is, besides, only an application of the general principle expressed in Article 1382*, and that Article itself may not be separated from Article 1384*, which renders the principal liable for the faults of his agent. Let us not forget in this respect that if, when a foreign vessel tortiously runs down another vessel in French waters, it be admitted that the owner of the foreign vessel did not in reality commit a tort on French territory, it is none the less true that he was represented therein on the one hand by the captain, his agent, and on the other hand by his vessel and that both the captain and the vessel are

*The articles of the Civil Code referred to read as follows:

"Art. 1382. Every human act whatever which injures another person, obligates the person by whose fault the injury has happened, to make compensation for the injury."

"Art. 1384. A person is liable not only for the injury which he caused by his own act, but also for the injuries which is caused by the act of persons for whom he is responsible or which is caused by things that are under his care. The father, and the mother after the death of her husband, are liable for injury caused by their minor children, living with them; masters and principals, for injury caused by their servants and agents within the scope of their employment; schoolmasters and master-mechanics, for injury caused by their pupils and apprentices while under their supervision. The above liability exists unless the father and mother, schoolmasters and master-mechanics prove that they were unable to prevent the act which gives rise to such liability. The civil liability of the State, however, takes the place of that of teachers in the public schools."

liable. The owner, indeed, is not bound as principal, only; he is further bound, in this special matter of maritime law, as owner of the vessel and properly speaking, *propter rem*. The best proof of this is that he may free himself from liability by a surrender, not of the captain, but of the ship.

In the determination of liability, the captain and the shipowner, who both have contributed to the damage, are not to be distinguished . . .

126] In the first place, the theory of the captain's commission (mandat) will not always lead to the solution which the brief for plaintiff in error seeks to reach and, in practice, it will encounter numerous difficulties.

The captain's commission, indeed, will not always be granted by the shipowner at the place of his domicile. The captain may die during the voyage and may be replaced at an intermediate port. What will then be the law of the place of the contract? Will it be that of the foreign port where the shipowner replaced his captain or even engaged an entire new crew or will it be that of the home port of the vessel, or of the domicile of the shipowner? . . .

No doubt, the collision is not the consequence of the captain's commission received from the shipowner. He did not direct the captain to collide with and sink the vessels, he would meet. But neither did the owner of a carriage whose driver injures or kills passers-by employ the latter to do what he has done; but the employer is none the less required to make compensation for the whole of the damage. Likewise parents, schoolmasters and master mechanics, quite irrespective of the duties prescribed by them for their minor children and pupils, are liable for their faults.

The liability of the shipowner, like that of all persons referred to in Article 1384, is not, therefore, derived from the captain's commission. It is based upon a higher conception, that of the relation of subordination which binds the principal to his agent;

the conception that in conferring this authority upon a man whose selection has not been sufficiently judicious or whose acts have not been subjected to sufficiently vigilant supervision, the principal has himself committed an error for which he is required to give compensation. As we pointed out above, it is the law, not the contract, which creates this liability. . . .

127] Moreover, it is to be noted that the unlimited liability which we assert in the case at bar against the foreign shipowner is the necessary counterpart of the right of abandonment, which, as your civil chamber has decided, belongs to him. In 1887, the Court of Appeals of Rennes (18 February 1887; in the Cour de Cassation 10 July, 1888; [1888] 1 Sirey 430) has held that the right of abandonment was a civil right, of which a foreign shipowner could not avail himself. Your civil chamber did not pass on that question in the decree of 4 November, 1891, but it settled it in 1895 by deciding that foreigners enjoy in commercial matters on French soil the same privileges and are entitled to the same protection, and may therefore invoke the same provisions of law, as Frenchmen. . . .

I therefore move that the prayer for a reversal be denied."

With special reference to appellees' brief and list of authorities, pp. 28 (bottom), 29 (top), and 112 (middle); the foregoing translation is

Respectfully submitted

FREDERICK M. BROWN,

MAURICE LÉON,

Of Counsel for Appellees.

HUNT, HILL & BETTS,

Proctors for Appellees.

23
Office Supreme Court, U. S.

FILED

JAN 27 1914

JAMES D. MAHER

CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 798

**THE OCEANIC STEAM NAVIGATION COMPANY, LIMITED,
AS OWNER OF THE STEAMSHIP TITANIC**

vs.

WILLIAM J. MELLOR AND HARRY ANDERSON

**ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT**

**NOTICE OF MOTION, PETITION AND REPLY BRIEF
FOR THE OCEANIC STEAM NAVIGATION
COMPANY, LIMITED**

BURLINGHAM, MONTGOMERY & BEECHER
Proctors for Oceanic Steam Navigation Company, Limited

CHARLES C. BURLINGHAM

J. PARKER KIRLIN

NORMAN B. BEECHER

Of Counsel

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 798

The Oceanic Steam Navigation Company,
Limited, as owner of the Steamship
TITANIC

vs.

WILLIAM J. MELLOR and HARRY ANDERSON.

SIRS:

PLEASE TAKE NOTICE that we shall apply to the Supreme Court on Monday, the 26th instant, at the opening of Court, for leave to file the subjoined reply brief herein.

Dated, New York, January 24, 1914.

Yours, etc.,

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Oceanic Steam Navigation
Company, Limited.

To

MESSRS. HUNT, HILL & BETTS
and MESSRS. HARRINGTON, BIGHAM & ENGLAR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 798

The Oceanic Steam Navigation Company,
Limited, as owner of the Steamship
TITANIC

vs.

WILLIAM J. MELLOR and HARRY ANDERSON.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES:

In behalf of the petitioner we ask leave to file the subjoined reply brief.

The short time between the granting of the motion to advance this cause and the day of argument made it impossible for either party to comply with the rules with regard to filing briefs. The petitioner's brief, however, was served on the claimants' counsel in page proof substantially as it appeared in its final form about a week before the argument, but we did not receive galley proof of the claimants' brief until the evening before the argument and did not see the brief in final form until the morning of the argument.

For this reason and because the claimants have submitted, under the title of a List of Authorities, what amounts substantially to a brief, we respectfully ask leave to file the subjoined reply brief.

Dated, January 24, 1914.

Respectfully submitted,

CHARLES C. BURLINGHAM,

Of counsel for the Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 798

The Oceanic Steam Navigation Company,
Limited, as owner of the steamship
TITANIC

VS.

WILLIAM J. MELLOR and HARRY ANDERSON.

REPLY BRIEF FOR OCEANIC STEAM NAVIGATION COMPANY, LIMITED

The claimants concede that the American Limited Liability Act applies to foreign vessels in certain circumstances, but contend that it does not apply generally. Circumstances may not, however, govern the application of a statute; our statute must be applied if the case comes within its terms. While, as was stated in *The Scotland*, our Act is the expression by Congress of our conception of justice, our courts do not apply it because of that fact; they apply it because it is the law which is binding upon them. Mr. Justice Bradley's discussion of general principles of right and justice was important only as the basis of this Court's decision in *The Scotland*, that our statute includes foreign as well as domestic shipowners. Once that decision has been made, however, and it is settled that the Act includes foreign as well as domestic shipowners, the considerations which led to that interpretation of the Act cease to be of any importance. The result of that

decision is to make the statute read thereafter "the owner of any vessel, *whether foreign or domestic*." The Act is then to be applied irrespective of the nationality of the vessels involved or of the place of the disaster. No theory of justice nor of law of the flag nor of *lex loci delicti* is any longer of any moment. As Dr. Lushington said (quoted at p. 39 of our brief):

"The statute applies to all foreign ships on the high seas or it applies to none."

The same thing is true of the present British Act, although no decisions have been found upon the precise point. Dicey, *Conflict of Laws*, 2d ed., p. 651; Marsden on *Collisions at Sea*, 6th ed., p. 155; Foote, *Private International Jurisprudence*, 3d ed., pp. 494-499; *The Amalia*, 1 Moo. P. C. N. S., 471. Probably the reason that no English decisions squarely upon the point can be found is that under the express language of the British Act no question as to its application to foreign ships under all circumstances has been raised.

The claimants ask this Court to read an exception into our statute and to refuse to apply it to foreign ships under certain circumstances. This is but to ask a reconsideration of the views expressed in *The Scotland*, where this Court held that, as the terms of our act were not restricted to any nationality or domicile, it should not be restricted by construction. Such an attempt to read qualifying words into an Act of Congress proved unsuccessful in the *Employers' Liability Cases*, 207 U. S., 463, 500. See also *Illinois Central Railroad Co. v. McKendree* 203 U. S., 514, 528-30, and cases there cited.

There is no principle of statutory construction which will permit a court to exclude specific cases from the operation of a general statute.

In the last analysis the claimants' whole case depends upon the proposition stated at page 54 of their brief, that:

"The American statute of Limited Liability applies *ex proprio vigore* only to American territorial waters and to American vessels on the high seas."

This is the precise contention which was successful in the English cases which were rejected in *The Scotland*. It is the contention which was unsuccessfully advanced in *The Scotland*, and substantially all of the claimants' arguments may be found in the briefs contained in Vol. II of the records of October Term, 1881, Nos. 40 and 43. Judge Shipman's decision in the *Levinson* case (p. 28 of our brief) was then before this Court, and it seems clear that Mr. Justice Bradley by his decision in *The Scotland* intended to establish the broad rule that Judge Shipman had declared.

Neither the American nor the British Limited Liability Act in any way inheres in the right, as was the case with the statutes considered in *Slater v. Mexican National R. R. Co.*, 194 U. S., 120, and *Davis v. Mills*, 194 U. S., 451. In *Stoomvaart Maatschappij Nederland v. Peninsular & Oriental Steam Nav. Co.*, 7 App. Cas., 795, 800, it was expressly held that the British Limited Liability Act creates no liability and does not make a shipowner in any case answerable in damages

"upon any principle, or to any extent, upon or to which he would not have been so 'answerable' if the Act had not passed."

Nor is there any interdependence between Lord Campbell's Act and the British Limited Liability Act. *Glaholm v. Barker*, L. R. 1 Ch. App., 223, 229.

Slater v. Mexican National R. R. Co., *supra*, illustrates the opposite situation. There the same Mexican statute which created a right of action for death made provision

as to the extent of the liability thus created, and this Court held that the Courts of the United States could not enforce that liability beyond the limits which inhered in the right by the terms of the law of its creation.

But it is quite a different proposition to assert that the liability existing under a foreign law must necessarily be enforced in our Courts to the full extent provided by that law. While such a right can be enforced to no greater extent than permitted by the law of its creation, it will not be enforced even to that extent in our Courts if either our policy or our statutes forbid. Thus, in the *Slater* case itself our Courts were unable to enforce the right created by the Mexican law to any extent whatever because of the limitation upon the judicial power of the forum.

Davis v. Mills, *supra*, is another illustration of a limitation inhering in the right. It was there held that the Montana statute prescribing a limitation of three years, by express reference to the statutory action, was a part of the statutory right of action existing in Montana, and so followed the right into Connecticut. But if Connecticut had had a statute prescribing a one year limitation for such an action the right could not have been enforced in the courts of Connecticut. Indeed, as appears from the report in 121 Fed. Rep., 703, a Connecticut statute prescribing a limitation of one year was urged upon the Court and was not applied only because it was found not to be applicable by its terms to such a form of action.

We have treated the questions before the Court broadly and without attempting to determine whether the Limited Liability Act can properly be regarded as merely a matter of remedy, and hence to be applied as the law of the forum. But it may well be asked whether any distinction can be drawn between our Limited Liability Act and an ordinary statute of limitations. The latter, when pleaded

as a defense, prevents the enforcement of an existing right after a certain lapse of time to any extent; the former, when pleaded as a defense, prevents the enforcement of an existing right at any time to a certain extent. Of course, it is true that the Limited Liability Act to a certain extent affects rights; but this is true of any statute which makes the enforcement of a right in any way less effectual. Upon this question the language of the Supreme Court of Iowa in *Dorr Cattle Co. v. Des Moines Natl. Bank*, 127 Iowa, 153, 162, seems apt.

"The act complained of is always to be diagnosed in the light of the law of the place where committed and its character determined according to that law; but the particular kind of and the extent of the remedy to be applied necessarily depends on the notions of justice entertained by the forum by which it is to be administered. The rule is like that pertaining to contracts. The *lex loci* determines their validity and meaning, but, when found valid and the true interpretation ascertained, the law of the forum steps in and declares the time, mode, and extent of the remedy."

This case contains a very full and thorough discussion of the whole subject, both upon principle and authority.

If, then, the Limited Liability Act is to be regarded as a statute respecting the remedy and of a similar nature to any other statute of limitation, it must necessarily govern as the *lex fori*. As this Court said in *Scudder v. Union Natl. Bank*, 91 U. S., 406, 413:

"Matters respecting the remedy, such as the bringing of suits, admissibility of evidence, statutes of limitation, depend upon the law of the place where the suit is brought."

BURLINGHAM, MONTGOMERY & BEECHER,

Proctors for Oceanic Steam Navigation
Company, Limited.

CHARLES C. BURLINGHAM,

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NORMAN B. BEECHER,

Of Counsel.

JAN 5 1914

JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER, 1913

No. 798

Oceanic Steam Navigation Company, Limited, as owner of the steamship TITANIC

VS.

WILLIAM J. MELLOR and HARRY ANDERSON

IN THE MATTER

OF

The Petition of MELLOR and ANDERSON for
a writ of *certiorari*.

BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI

The reasons advanced in support of this application are, in general, that the three questions certified necessarily do not raise all the questions before the Circuit Court of Appeals, and that it is desirable, with a view to avoiding delay, that this Court should dispose of all questions of law which are presented in the case, unhampered by the form of the questions certified.

With the general purpose of the application thus expressed we are entirely in sympathy, but we do not think that the issuance of the writ of *certiorari* is either necessary or desirable to accomplish this result.

The subject matter of the appeal before the Circuit Court of Appeals is fully covered by the certificate. But a single point was presented to the Circuit Court of Appeals for decision—Is the petitioner entitled to maintain this proceeding upon the facts stated in the petition? The determination of that question depends entirely upon the answer of this Court to question A.

The petitioners do not attempt to indicate the nature of the additional questions which they desire this Court to consider. The very form of the certified questions themselves, as well as the accompanying statement and exhibits, indicates that question A presents the only question before the Circuit Court of Appeals, and that questions B and C go further and ask for instruction as to matters which have not yet arisen in the proceeding, but which it was thought might arise, and which were discussed by the District Judge in his opinion. Conceivably this application might have been made in order to prevent this Court from answering questions B and C; but even such a course would be unnecessary because this Court has repeatedly held that it would not answer questions not properly presented by the record.

Webster v. Cooper, 10 How., 54;

Jewell v. Knight, 123 U. S., 426;

Chicago B. & Q. R. R. Co. v. Williams, 205 U. S., 444.

The suggested convenience of having the entire record before this Court would require the granting of the writ in every such case. The only papers omitted, as the petition states, are the interlocutory decree and the opinion of the

District Court. Obviously, the interlocutory decree could be of no value, and the writ of *certiorari* was certainly not intended to be used for the purpose merely of bringing before this Court the opinion of the lower tribunal.

It would seem that the effect of granting the writ would be to bring about delay rather than in any way to aid in the speedy disposition of the appeal.

It is respectfully submitted that the petition for a writ of *certiorari* should be denied.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Oceanic Steam Navigation
Company, Limited.

CHARLES C. BURLINGHAM,
J. PARKER KIRLIN,
NORMAN B. BEECHER,
Of Counsel.

OPINION

OCEANIC STEAM NAVIGATION COMPANY, LIMITED,
AS OWNER OF THE STEAMSHIP TITANIC,
v. MELLOR.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT.

No. 798. Argued January 13, 14, 1914.—Decided May 25, 1914.

This case falls within the general proposition that a foreign ship may resort to the courts of the United States for a limitation of liability under § 4283, Rev. Stat. *The Scotland*, 105 U. S. 24.

It is competent for Congress to enact that in certain matters belonging

233 U. S. Argument for Owners of the Titanic.

to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it marks out. *Butler v. Boston S. S. Co.*, 130 U. S. 527.

In the case of a disaster upon the high seas, where only a single vessel of British nationality is concerned and there are claimants of many different nationalities, and where there is nothing before the court to show what, if any, is the law of the foreign country to which the vessel belongs, touching the owner's liability for such disaster, such owner can maintain a proceeding under §§ 4283, 4284 and 4285, Rev. Stat., and Rules 54 and 56 in Admiralty.

If it appears in such a case that the law of the foreign country to which the vessel belongs makes provision for the limitation of the vessel owner's liability, upon terms and conditions different from those prescribed in the statutes of this country, the owner can, nevertheless, maintain a proceeding in the courts of the United States under §§ 4283, 4284 and 4285, Rev. Stat., and Rules 54 and 56 in Admiralty.

In such a proceeding the courts of the United States will enforce the law of the United States in respect of the amount of such owner's liability, and not that of the country to which the vessel belongs.

THE facts, which involve the construction of the Limited Liability Act and the right of the petitioner in this case to the benefit thereof, are stated in the opinion.

Mr. Charles C. Burlingham, Mr. Norman B. Beecher, and Mr. J. Parker Kirlin, for Oceanic Steam Navigation Co., Ltd.:

The Limited Liability Act applies equally to American and foreign shipowners; it establishes maritime law of the United States to be universally applied in our courts as an expression of our conception of justice.

Under *The Scotland*, 105 U. S. 24, foreign shipowners are entitled to benefit of our Limited Liability Act.

The English cases giving narrow construction of early British statute were disapproved by this court in *The Scotland*.

The law of limited liability is a part of our maritime code, and is to be applied whether favorable or adverse to foreign ships.

The Harter Act decisions of this court are controlling authorities in the interpretation of the Limited Liability Act.

The application of the Harter Act to foreign ships, irrespective of nationality, is based on the broad interpretation previously given the Limited Liability Act.

The rule of limited responsibility has been uniformly applied in our courts, as shown by a history of the cases.

The application of the Limited Liability Act is not affected by the immaterial circumstance that but a single vessel is involved; and this notwithstanding the *dictum* of Mr. Justice Bradley in *The Scotland*.

Under the *La Bourgogne Case* the doctrine of the law of the flag applies only to very limited extent.

The claimants' authorities can be distinguished.

The purpose of the Limited Liability Act is not only to provide limitation, but also to enable all parties to be brought into concourse for the determination of whatever liability exists.

There is no question of limitation presented until the liability has been determined and until then the consideration of the law to be applied is premature.

In this case no other law than our own has been thus shown.

Question A should be answered in the affirmative; Question B, if answered, in the affirmative; Question C, if answered, The Law of the United States.

In support of these contentions, see *The Alaska*, 130 U. S. 201; *The Amalia*, 1 Moo. P. C. N. S. 471; Br. & Lush. 151; *The Belgenland*, 114 U. S. 355; *The Britannic*, 39 Fed. Rep. 395; *Butler v. Boston S. S. Co.*, 130 U. S. 527; *The Carl Johan*, cited in *The Dundee*, 1 Hagg. Adm. 109, 113; *Chartered Mercantile Bank v. Netherlands India Co.*, 10 Q. B. D. 521; *The Chattahoochee*, 173 U. S. 540; *Churchill v. The British America*, 9 Ben. 516; *The City of Norwalk*, 55 Fed. Rep. 98; *Cohens v. Virginia*, 6 Wheat. 264; *Cope*

233 U. S. Argument for Mellor and Anderson.

v. *Doherty*, 4 Kay & J. 367; S. C., 2 De G. & J. 614; *The Corsair*, 145 U. S. 335; *Cromartyshire v. La Bourgogne*, 44 Shipp. Gazette, 31; S. C., 44 *id.* 311; *Cuba Railroad Co. v. Crosby*, 222 U. S. 473; *The Dundee*, 1 Hagg. Adm. 109; *Dyer v. National Steam Nav. Co.*, 3 Ben. 173; S. C., 14 Blatchf. 483; *The Eagle Point*, 142 Fed. Rep. 453; *General Collier Co. v. Schurmanns*, 1 J. & H. 180; *The Girolamo*, 3 Hagg. Adm. 169; *The Great Western*, 9 Ben. 403; *The H. F. Dimock*, 52 Fed. Rep. 598; *The Hamilton*, 207 U. S. 398; *The Harrisburg*, 119 U. S. 199; *The Jason*, 225 U. S. 32; *The John Bramall*, 10 Ben. 495; *Knott v. Botany Mills*, 179 U. S. 69; *La Bourgogne*, 210 U. S. 95; *The Lamington*, 87 Fed. Rep. 752; *Levinson v. Oceanic Steam Nav. Co.*, 15 Fed. Cas. 422; *Liverpool Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397; *The Lottawanna*, 21 Wall. 558; *Marckwald v. Oceanic Steam Nav. Co.*, 11 Hun. 462; *In re Morrison*, 147 U. S. 14; *The Norge*, 156 Fed. Rep. 845; *The North Star*, 106 U. S. 17; *Norwich Co. v. Wright*, 13 Wall. 104; *Pollock v. Farmers' L. & T. Co.*, 157 U. S. 429; *Prov. & N. Y. S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578; *Queen v. Keyn*, 2 Ex. D. 63; *Richardson v. Harmon*, 222 U. S. 96; *The San Pedro*, 223 U. S. 365; *The Scotland*, 105 U. S. 24; *The Silvia*, 171 U. S. 462; *Slater v. Mexican Railroad Co.*, 194 U. S. 120; *The State of Virginia*, 60 Fed. Rep. 1018; *The Strathdon*, 89 Fed. Rep. 374; *Talbot v. Seeman*, 1 Cranch, 1; *The Thingvalla*, 48 Fed. Rep. 764; *Thomassen v. Whitwell*, 9 Ben. 403; *The Wild Ranger*, 1 Lush. 553.

Mr. Frederick M. Brown and Mr. George Whitefield Betts, Jr., with whom Mr. Francis H. Kinnicutt, Mr. Kenneth Gardner and Mr. John C. Prizer were on the brief, for Mellor and Anderson:

The law of the flag governs, and upon fundamental principle, the British law as the *lex loci delicti*, fixes the limit of petitioner's liability. The rule that liability for a tort on land is governed by the *lex loci delicti* is universal.

Kaiser Ferdinand v. M——, 57 Reichsgericht, 142; *Wilson v. McNamee*, 102 U. S. 572; *Huntington v. Attrill*, 146 U. S. 657, 670; *Herrick v. Minn. & St. L. Ry.*, 31 Minnesota, 11.

The only exception is where enforcement of the *lex loci delicti* would be contrary to the public policy of the State of the forum. *Nor. Pac. R. R. v. Babcock*, 154 U. S. 190, 198; *The Braniford City*, 29 Fed. Rep. 373, 395. And see *Powell v. Gt. Nor. Ry.*, 102 Minnesota, 448.

In maritime disasters upon the high seas, involving one foreign vessel or several vessels of the same foreign nationality, the law of the country to which the vessel or vessels belong, governs the rights of all parties. 1 Calvo Droit Int. (4th ed.), 552 (Bk. VI, § 3); Bluntschli, § 317; Vattel I, c. 19, § 216; Rutherford II, c. 9, §§ 8, 19; Kent I, page 26; Wheaton, 8th ed., § 106; Wharton, Internat. Law, Dig. I, § 26; Wharton, Confl. of Laws (3d ed.), § 356; *Crapo v. Kelly*, 16 Wall. 610, 625.

The law of the flag is the *lex loci delicti*. Minor, Confl. of Laws, § 195; Dicey, Confl. Laws, 2d ed., § 663; Wharton, Confl. Laws, § 473; *Patterson v. Barque Eudora*, 190 U. S. 169, 176; *The Hamilton*, 207 U. S. 398, 405; *The Scotia*, 14 Wall. 170, 184; *Crapo v. Kelly*, 16 Wall. 610, 624; *United States v. Palmer*, 3 Wh. 610, 631; *United States v. Klintock*, 5 Wh. 144; *Wilson v. McNamee*, 102 U. S. 572; *Re Ah Sing*, 13 Fed. Rep. 286; *Re Moncan*, 14 Fed. Rep. 44; *Marshall v. Murgatroyd*, L. R. (1870), 6 Q. B. 31.

Causes of action for death at sea, due to collision or other cause, are governed by the law of the flag. *The Hamilton*, 207 U. S. 398, 405; *La Bourgogne*, 210 U. S. 95, 138; 139 Fed. Rep. 433, 438; *The E. B. Ward*, 17 Fed. Rep. 456, 459; *McDonald v. Mallory*, 77 N. Y. 546; *Lindstrom v. Int. Nav. Co.*, 117 Fed. Rep. 170; 123 Fed. Rep. 475; *So. Pac. Co. v. de Valle da Costa*, 190 Fed. Rep. 689; 176 Fed. Rep. 843; *The Jane Gray*, 95 Fed. Rep. 693; *Stewart v. Balt. & O. R. R.*, 168 U. S. 445.

For the English rule see *Lloyd v. Guibert*, L. R. 1 Q. B.

233 U. S.

Argument for Mellor and Anderson.

115, 127 (1865). For the rule in France, see *The Dio Adelphi*, Nov., 1879, 91 Jour. du Palais, 1880, pp. 603, 609.

Where the colliding vessels are of the same nationality or where they belong to different nations whose laws, applicable to the disaster, are the same, irrespective of the nationality either of the persons on board the vessels or of the owners of property on board the vessels or of the parties litigant, the law of the flag must, on principle, govern the rights and liabilities and the limitations of the liabilities of all persons, growing out of the disaster. 5 Desjardins, Dr. Comm. Marit, 118; *The Amalia*, 1 Moore, P. C. N. S. 471, 482. For the single exception to this statement, see *Cope v. Doherty*, 4 Kay & Johns. 367.

For the views of the highest courts of the leading commercial nations in regard to the principles governing problems of rights and liabilities where vessels of different flags are involved, see Clunet Droit Int. Prive, 80, 154, 241, 593; *The Scotland*, 105 U. S. 24, 30; *The Apollo*, 103 Jour. du Pal. 1892, Pt. I, 69; *The Stokesley Darras*, Droit Int. Prive, 114, 125; *The Kong Inge*, 49 Reichsgericht, 182; *The Srea*, 74 Id. 46. Under the English rule positive municipal laws and regulations in this class of cases, yield to the general maritime law, even if the collision in question occur in the territorial waters of the country of the forum; *The Zollverein*, Swabey, 96; *The Saxonia*, Lush. Adm. 410; *The Nostra Signora*, 1 Dobson, 290; *The Wild Ranger*, Lush. 553; *The Leon*, 6 P. D. 148, unless the intention of the law-giving authority that the municipal law shall displace the general maritime law is clearly expressed. *The Amalia*, 1 Moore P. C., N. S., 471.

The English doctrine would afford no support to the contentions of the appellant. As the limited liability principle never was a part of the general maritime law, *The Volant*, 1 W. Rob. 383, 387; *The Alene*, 1 W. Rob. 111, 117, and has not acquired, for the United States, the

force of the general maritime law since the act of 1851 was adopted. *The Scotland; La Bourgogne*, *supra*.

The American view in such cases, see *The Scotland*, *supra*, applying the *lex fori* to cases of collision between vessels of different nations, has many adherents in continental Europe; although, as already seen, it has not found acceptance in the highest courts of France, whereas in Germany the Imperial Court has adopted it only in a modified form. See Valroger *Droit Maritime*, § 2124.

Diversity of citizenship of parties litigant is not a factor of legal significance. If the controversy were one of which the court might assume or decline jurisdiction in its discretion, the nationality of the parties litigant might be a material factor. *Neptune Nav. Co. v. Timber Co.*, 37 Fed. Rep. 159; *The Russia*, 3 Ben. 471; *Elder Dempster Co. v. Pouppirt*, 125 Fed. Rep. 732.

When once the court has assumed jurisdiction it should mete out justice with an even hand, regardless of race, nationality, politics or religion. If the transaction has happened beyond our territorial jurisdiction, the court should give litigants the benefit of the *lex loci* of the occurrence. *Huntington v. Attrill*, 146 U. S. 657, 670; *La Bourgogne*, 210 U. S. 95, 115; *Cuba R. R. Co. v. Crosby*, 222 U. S. 473, 478; *The Brantford City*, 29 Fed. Rep. 373, 384; *Nor. Pac. Ry. v. Mase*, 63 Fed. Rep. 114; *The Belgenland*, 114 U. S. 355, 370; *Thomassen v. Whitwell*, 12 Fed. Rep. 894.

A single-ship disaster involves the same principle as a collision between two ships of the same nation. *The Lamington*, 87 Fed. Rep. 752; *The Egyptian Monarch*, 36 Fed. Rep. 773; *The Maud Carter*, 29 Fed. Rep. 156; *Pope v. Nickerson*, Fed. Cas. 11,274. The American statute applies *ex proprio vigore* only to American territorial waters and to American vessels on the high seas.

The statutes of any State or nation have no extra territorial force or effect in regulating acts or occurrences be-

233 U. S.

Argument for Mellor and Anderson.

yond its territorial boundaries. *In re Sawers*, 12 Ch. Div. 522, 528; *Phillips v. Eyre*, L. R., 6 Q. B. 1, 28; cases *supra* and *American Banana Co. v. United Fruit Co.*, 213 U. S. 347; *Atchison &c. Ry. v. Sowers*, 213 U. S. 55, 70; *The Scotia*, 14 Wall. 170, 184; *Bank v. Earle*, 13 Pet. 519; *The Laminton*, 87 Fed. Rep. 752; *Whitford v. Panama R. R. Co.*, 23 N. Y. 445; *Mahler v. Transp. Co.*, 35 N. Y. 352; *Thompson v. Ketcham*, 8 Johns. 190; *Le Forest v. Tolman*, 117 Massachusetts, 109; *Rundell v. Comp. Gen. Trans.*, 100 Fed. Rep. 655, 660; *United States v. Palmer*, 3 Wh. 610, 631; *United States v. Klintonck*, 5 Wh. 144; *United States v. Davis*, 2 Fed. Cas. No. 14,932; 1 Kent's Comm., p. 26.

The British courts invariably held American and other foreign vessels liable without limit for negligent disasters at sea, while the former British Limitation Act was in force; although it does not appear that the British courts were ever asked to apply the American Act as the *lex loci delicti*, after that act had been duly pleaded and proved. *The Wild Ranger* (P. C.), Lush. Adm. 553; *Cope v. Doherty*, 2 De Gex & J. 614; *The Carl Johan*, 3 Hag. Adm. 186; *The Amalia*, 1 Moore P. C., N. S., 471, 475.

Our courts should not give British shipowners here the benefit of a more favorable rule of international law than is accorded to American shipowners in the British courts. *The Amalia*, *supra*; *The Santa Cruz*, 1 C. Rob. 50, 60, 64, 67; *The Adeline*, 9 Cranch, 244, 288.

There is no analogy between the Limited Liability Act and the Harter Act. The national policies, of which the two acts are expressions, are wholly different. The one act was designed to increase the liability of foreign ships, the other to diminish the liability of domestic ships.

The purpose of the Limited Liability Act was to change the position of, and to confer a benefit upon American ships and shipowners only. *La Bourgogne*, 210 U. S. 95, 120; *Richardson v. Harmon*, 222 U. S. 96, 103; *Moore v. Am. Transp. Co.*, 24 How. 1, 39; *Providence Co.*

v. *Hill Mfg. Co.*, 109 U. S. 578, 588; *The Maine*, 152 U. S. 122, 128; *Chamberlain v. Transp. Co.*, 44 N. Y. 305.

The debates accompanying the passage of the liability acts of 1851 and 1884, and of 1886, extending them to lake vessels, barges, etc., show that Congress intended them to apply only to American vessels.

The law of Great Britain must be taken, presumptively, as a law holding shipowners to unlimited liability.

The petition cannot be aided by any legal rule that the British law of limited liability is presumed to be similar to the American law, until shown by proper pleading and proof not to be similar. No such rule exists. *Crosby v. Cuba R. Co.* (C. C.), 158 Fed. Rep. 144; S. C., 222 U. S. 473; *Lloyd v. Matthews*, 155 U. S. 222; *Crashley v. Press Pub. Co.*, 179 N. Y. 27; *Wooden v. W. N. Y. & P. R. Co.*, 126 N. Y. 10, 15; *Whitford v. Panama R. Co.*, 23 N. Y. 465, 468; *Carpenter v. Grand Trunk R. R.*, 72 Maine, 388.

The presumption of identity of the foreign law with the common law of the forum is indulged as a practical rule of convenience only where the situation is such as to create a strong probability that the two laws are in truth and fact identical or substantially so. *Dainese v. Hale*, 91 U. S. 13, 20, 21; *Langdon v. Young*, 33 Vermont, 136; *McDonald v. Mallory*, 77 N. Y. 546; *Lewis v. Woodfolk*, 2 Baxter (Tenn.), 25; *Leonard v. Columbia Nav. Co.*, 84 N. Y. 48; Minor, *Confl. of Laws*, § 214.

The presumption is that the British law on the subject of limitation of liability is that which is represented by the common law, judicially known to our courts. *Commonwealth v. Chapman*, 13 Metc. 68; *United States v. Reid*, 12 How. 361, 363; *Murray v. Chicago & N. W. Ry. Co.*, 62 Fed. Rep. 24, 27. Cited with approval in *Western Union Tel. Co. v. Call Pub. Co.*, 181 U. S. 92, 103.

The common law, as understood in this country and in England, charges petitioner with liability without limit. *The Volant*, 1 W. Rob. 383, 387; *The Scotland*, 105

233 U. S. Argument for Mellor and Anderson.

U. S. 24, 28; *The Great Western*, 118 U. S. 520, 534; *The Main*, 152 U. S. 122; *The Bourgogne*, 210 U. S. 95, 116.

Therefore it must be presumed that in Great Britain, shipowners are liable without limit for disasters governed by British law, if the shipowner before the court, challenged by his adversary to establish his legal right to enjoy the benefit of any statute or law of limitation of liability, fail to plead and prove the British law.

Under the legal principle actually applicable here, the American courts must be taken as having judicial knowledge of the fact that in 1776 when this country became independent of Great Britain, the laws of the latter (statutory and non-statutory) held shipowners to unlimited liability for torts in the navigation of their ships and the courts are bound to presume, in the absence of suitable pleadings and proof to the contrary, that such is still the state of the British law. *Matter of Huss*, 126 N. Y. 537, 542; *Raynham v. Canton*, 3 Pick. 293; *Stokes v. Macken*, 62 Barb. 145; *Malpica v. McKown*, 1 La. (O. S.) 248, 255; *Arayo v. Currel*, 1 La. (O. S.) 528, 541; *Davis v. Curry*, 5 Kentucky, 238, 240, 241; *Berluchaux v. Berluchaux*, 7 La. (O. S.) 34; *Mex. Cen. Ry. v. Glover*, 107 Fed. Rep. 356; *Mex. Cen. Ry. v. Marshall*, 91 Fed. Rep. 933; *People v. Manhattan Co.*, 9 Wend. 351; *People v. Calder*, 30 Michigan, 85; *Cochran v. Ward*, 31 N. E. 581; *Scales v. Sir John Key*, 11 Ad. & Ell. 819; *Dempster v. Stephen*, 63 Ill. App. 126; *Newton v. Cocke*, 10 Arkansas, 169; *Miller v. McVeagh*, 40 Ill. App. 532; *The Pawashick*, 2 Lowell, 142.

The only British law on this general subject existing in 1776 was the act of 1734 (7 Geo. II, c. 15), the scope of which was confined to embezzlement by the master and crew and acts *ejusdem generis*. *The Dundee*, 1 Hagg. Adm. 109, 121; Abbott, 14th ed., 1045; Maclachlan, 5th ed., 128.

The assertion by a shipowner of his freedom from fault does not justify the court in entertaining a limitation proceeding unless, in case of his opponent prevailing on the

issue of negligence, his averments bring him *prima facie* within the scope of some law of limited liability, properly applicable to the facts of the case.

If British law governs the Titanic disaster, the petition was properly subject to exceptions under the authorities. *Cope v. Doherty*, 2 De Gex & J. 614; *The Amalia* (1863), 1 Moore P. C., N. S. 471; *The Wild Ranger* (1862), Lush. Adm. 553; *Richardson v. Harmon*, 222 U. S. 96; *Delaware R. Ferry v. Amos*, 179 Fed. Rep. 756; *The Mamie*, 5 Fed. Rep. 813; 8 Fed. Rep. 367; 110 U. S. 742; *In re Eastern Dredging Co.*, 138 Fed. Rep. 942.

For authorities giving the history of the development of the law of Great Britain on the subject of the limitation of shipowners' liability, see *The Volant*, 1 W. Rob. 383, 387; *The Carl Johan*, 1 Hagg. Adm. 113; *The Dundee*, 1 Hagg. Adm. 109, 120, 121; *The Mellona*, 3 W. Rob. 16, 20; *Wilson v. Dickson*, 2 B. & Ald. 2; *The Amalia*, *supra*; *Chapman v. Nav. Co.*, 4 P. D. 157; *The Andalusian*, 3 P. D. 182, 189; *The Main*, 152 U. S. 122; Temperley & Moore (2d ed.), p. 292; MacLachlan (5th ed.), 126; Abbott (14th ed.), 637; Marsden, Collisions, chap. 7.

There have been two sorts of British acts regulating the liability of shipowners for torts happening without personal fault on their part: (a) those that regulate the liability of shipowners for loss or destruction of goods on board their ships, owing to fire or to robbery or to embezzlement, and (b) those that limit the liability of shipowners for torts generally.

In respect of fire, robbery, or embezzlement, Parliament referred to "any ship or vessel" in the acts of 7 Geo. II, c. 15 (1734), and 26 Geo. III, c. 86 (1786), and to "any sea-going ship" in the act of 17 & 18 Vict., c. 104; M. S. A., 1854, § 504, and (for greater clearness, Temperley, 2d ed., p. 293) to "any British sea-going ship" in the act of 57 & 58 Vict., c. 60; M. S. A., 1894, § 502.

In respect of limitation of shipowners' liability for torts

233 U. S.

Argument for Mellor and Anderson.

generally, Parliament referred to "any ship or vessel" in the act of 63 Geo. III, c. 159, § 1 (1813), and to "any sea-going ship" in the act of 17 & 18 Vict., c. 104; M. S. A., 1854, § 504, and to "any ship, whether British or foreign," in the acts of 25 & 26 Vict., c. 63; M. S. A., 1862, § 54, and 57 & 58 Vict., c. 60; M. S. A., 1894, § 503.

The acts of 61 & 62 Vict., c. 14 (1898); 63 & 64 Vict., c. 32 (1900); 6 Edw. VII, c. 48, §§ 69, 70, 71 (1906), although dealing with the same general subjects, afford no additional information concerning the will of Parliament as to the scope of the statutes regulating shipowners' liability.

For cases showing error in points advanced in appellant's brief see cases already cited and also *The Alaska*, 130 U. S. 201; *The Andalusian*, 3 P. D., 182, 189; *The Britannic*, 39 Fed. Rep. 395; *The British America*, 9 Ben. 516; *Camille v. Couch*, 40 Fed. Rep. 176; *The Carl Johan*, 1 Hagg. Adm. 113; 3 Hagg. Adm. 186; *Compania la Flecha v. Brauer*, 168 U. S. 104, 118; *Cope v. Doherty*, 4 Kay & J. 367, 391; *Danschewski v. Larsson*, 3 Revue Int. du Droit Marit, 348; *The Dundee*, 1 Hagg. Adm. 109, 120; *The Eagle Point*, 142 Fed. Rep. 453; 201 U. S. 644; *Foltz v. St. Louis R. Co.*, 60 Fed. Rep. 316; *Hale v. Allison*, 188 U. S. 56; *The John Bramall*, 10 Ben. 495, 502; *Kieffer v. G. Trunk Ry.*, 12 App. Div. 28, 31; *Le Forest v. Tolman*, 117 Massachusetts, 109; *Levinson v. Oceanic S. Nav. Co.*, 15 Fed. Cas. 422; *Louisville Trust Co. v. Knott*, 191 U. S. 225, 236; *The Main*, 152 U. S. 122, 126; *Marselis v. Morris, Co. Canal*, 1 N. J. Eq. 31, 35; *The Mellona*, 3 W. Rob. 16, 20; *New v. Oklahoma*, 195 U. S. 252, 256; *The Norge*, 156 Fed. Rep. 845, 850; *Pritchard v. Norton*, 106 U. S. 124, 131; *Schulenberg Lumber Co. v. Hayward*, 20 Fed. Rep. 422; *Shelby v. Guy*, 11 Wheaton, 361, 371; *The State of Virginia*, 60 Fed. Rep. 1018; *The Strathdon*, 89 Fed. Rep. 374, 380; *Venice v. Woodruff*, 62 N. Y. 462, 470; *United States v. More*, 3 Cranch, 159, 171; *United States v. Sanges*, 144 U. S. 310, 319; *Washington County v. Williams*, 111 Fed. Rep.

801, 812; *Re Wentworth Co.*, 191 Fed. Rep. 821; Westlake, Priv. Int. Law, § 201; *Wilson v. Dickson*, 2 B. & Ald. 2.

By leave of court *Mr. Howard S. Harrington, Mr. Henry J. Bigham, Mr. D. Roger Englar and Mr. Oscar R. Houston* filed a brief for intervening claimants as *amici curiæ*, as did also *Mr. A. Gordon Murray and Mr. Benjamin Micou, Mr. Richard P. Whiteley and Mr. George S. Graham.*

MR. JUSTICE HOLMES delivered the opinion of the court.

This case comes here upon a certificate from the Circuit Court of Appeals. The facts stated are as follows, with slight abbreviation. The Titanic, a British steamship, which had sailed from Southampton, England, on her maiden voyage for New York, collided on the high seas with an iceberg, on April 14, and sank the next morning, with the loss of many lives and total loss of vessel, cargo, personal effects, mails and everything connected with the ship except certain life boats. The owner, alleging that the loss was occasioned and incurred without its privity or knowledge, filed a petition for limitation of its liability under the laws of the United States, Rev. Stats., §§ 4283, 4284, 4285, and Admiralty Rules 54 and 56. 210 U. S. 562, 564. Before it did so a number of actions to recover for loss of life and personal injuries resulting from the disaster had been brought against the petitioners in Federal and state courts. The persons who sustained loss were of many different nationalities, including citizens of the United States. Mellor, a British subject, excepted to the petition, on the ground that 'the acts by reason of which and for which [the petitioner] claims limitation of liability took place on board a British registered vessel on the high seas' and therefore the law of the United States would not apply. Anderson, a citizen of the United States, excepted on the ground that the law of the United States

233 U. S.

Opinion of the Court.

could not and that of England was not shown to apply. The District Court dismissed the petition as to these two. 209 Fed. Rep. 501. The petitioner appealed, and the Circuit Court of Appeals certified the following questions:

A. Whether in the case of a disaster upon the high seas, where (1) only a single vessel of British nationality is concerned and there are claimants of many different nationalities; and where (2) there is nothing before the court to show what, if any, is the law of the foreign country to which the vessel belongs, touching the owner's liability for such disaster,—such owner can maintain a proceeding under §§ 4283, 4284 and 4285 U. S. Revised Statutes and the 54th and 56th Rules in Admiralty?

B. Whether, if in such a case it appears that the law of the foreign country to which the vessel belongs makes provision for the limitation of the vessel owner's liability, upon terms and conditions different from those prescribed in the Statutes of this country, the owner of such foreign vessel can maintain a proceeding in the courts of the United States, under said Statutes and Rules?

In the event of the answer to question B being in the Affirmative,

C. Will the courts of the United States in such proceeding enforce the law of the United States or of the foreign country in respect to the amount of such owner's liability?

The general proposition that a foreign ship may resort to the courts of the United States for a limitation of liability under Rev. Stat., § 4283 is established. *The Scotland*, 105 U. S. 24. *La Bourgogne*, 210 U. S. 95. These were cases respectively of collisions between American and English and English and French vessels. See also *The Chattahoochee*, 173 U. S. 540. *The Germanic*, 196 U. S. 589, 598. But it is argued that there is an exception in a case like this, where only a single foreign ship is concerned. The argument is supported by a quotation from Mr. Justice Bradley in *The Scotland*, to the effect that if a collision occurred

on the high seas between two vessels belonging to the same nation the court would determine the controversy by the law of their flag. For, it is said, if the foreign law would govern in that case it must govern in this, and therefore at least in the absence of allegations bringing the case within the foreign law, the petition must be dismissed. If, in the observation referred to, Mr. Justice Bradley had been speaking of proceedings of this class it would be important as sanctioning the view that the United States courts offered a *forum concursus* for the administration of other systems as well as of our own; but we apprehend that he was speaking of an ordinary collision case and merely indicating that in such a case the principle usually governing foreign torts would apply. That principle may be accepted as equally governing here but it does not carry us far.

It is true that the act of Congress does not control or profess to control the conduct of a British ship on the high seas. See *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356. It is true that the foundation for a recovery upon a British tort is an obligation created by British law. But it also is true that the laws of the forum may decline altogether to enforce that obligation on the ground that it is contrary to the domestic policy, or may decline to enforce it except within such limits as it may impose. *Cuba Railroad Co. v. Crosby*, 222 U. S. 473, 478, 480. Dicey, *Conflict of Laws*, 2d ed., 647. It is competent therefore for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out. *Butler v. Boston & Savannah Steamship Co.*, 130 U. S. 527. The question is not whether the owner of the Titanic by this proceeding can require all claimants to come in and can cut down rights vested under English law, as against, for instance, Englishmen living in England who do not appear. It is only whether those who do see

233 U. S.

Opinion of the Court.

fit to sue in this country are limited in their recovery irrespective of the English law. That they are so limited results in our opinion from the decisions of this court. For on what ground was the limitation of liability allowed in *The Scotland* or *La Bourgogne*? Not on their being subject to the act of Congress or any law of the United States in their conduct—but if not on that ground then it must have been because our statute permits a foreign vessel to limit its liability according to the act when sued in the United States. There may be some little uncertainty in the language of Mr. Justice Bradley in the earlier case. A slight suggestion that the statute is applied because of a vacuum,—the absence of any law properly governing the transaction. But it was no necessary part of his argument that people were to be made liable after the event by the mere choice of a forum; and if they were it would not be because of the act of Congress. That does not impose but only limits the liability—a liability assumed already to exist on other grounds. The essential point was that the limitation might be applied to foreign ships if sued in this country although they were not subject to our substantive law.

It is not necessary to consider whether the act of Congress may not limit the rights of shippers or American vessels to recover for injuries in our waters or on the high seas, so that if they sued in a foreign court they could not be allowed to recover more than the act allows, if our construction of the law were followed. A law that limits a right in one case may limit a remedy in another. This statute well might be held to announce a general policy, governing both obligations that arise within the jurisdiction and suits that are brought in the courts of the United States. *Emery v. Burbank*, 163 Massachusetts, 326, 328. It clearly limits the remedy, as we have shown, in cases where it has nothing to say about the rights. With the explanation that we have made we may repeat here Jus-

tice Bradley's words: "The rule of limited responsibility is now our maritime rule. It is the rule by which, through the Act of Congress, we have announced that we propose to administer justice in maritime cases."

We see no absurdity in supposing that if the owner of the Titanic were sued in different countries, each having a different rule affecting the remedy there, the local rule should be applied in each case. It can be imagined that in consequence of such diverse proceedings the owner might not be able to comply with the local requirements for limitation, as it also is conceivable that if it sought the advantage of an alien law it might as a condition have to pay more than its liability under the law of its flag in some cases. But the imagining of such possible difficulties is no sufficient reason for not applying the statute as it has been construed; on the whole, it would seem with good effect.

It follows from what we have said that the first two questions must be answered in the affirmative and the third, the law of the United States.

Answers: A, Yes.

B, Yes.

C, The law of the United States.

MR. JUSTICE MCKENNA considers it a proper deduction from *The Scolland* that the law of the foreign country should be enforced in respect of the amount of the owner's liability.